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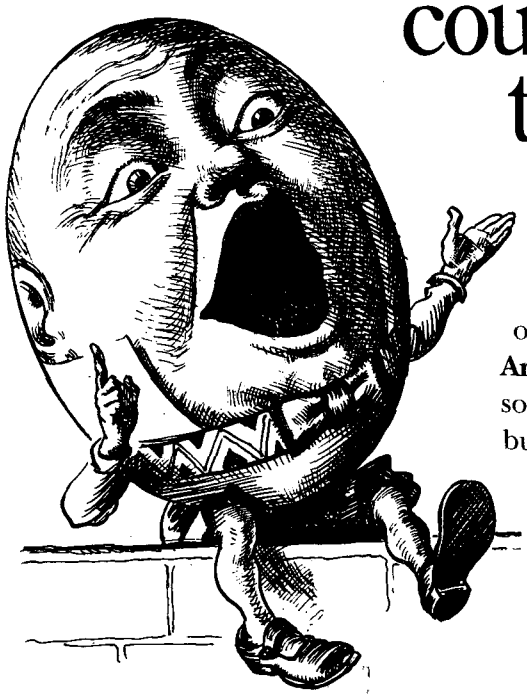

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THE BEAT GENERATION

Community Policing at Its Best

WILLIAM D. EGGERS AND JOHN O'LEARY

> We must restore a balance between citizen and police responsibilities, [for] effective social control cannot possibly be achieved by hired hands alone.
>
> —Herman Goldstein, *Policing a Free Society*

Americans live in fear. We live in the most criminally violent times in our nation's history. The level of street crime is between three and four times what it was in 1960, and the rate of violent crimes quadrupled between 1966 and 1990. People no longer feel safe walking to the corner store or letting their kids bike to the local park.

In healthy communities, individuals establish and enforce codes of conduct, both formal and informal. Litterers get a lecture. Speeders get yelled at. Unruly youths get a tongue-lashing. But in unhealthy communities, the fear of crime keeps people shut up in their homes (especially the elderly), cuts off commercial activity, alienates individuals from each other, and surrenders the streets to the very kind of disorderly activity that fuels crime in the first place. Community is eroded, and because individuals are afraid to maintain order, the community loses its lawful environment.

Until neighborhoods are safe again, they will not thrive economically or socially. Waiting for the government to make it all better is a losing strategy. People have to become more involved in ensuring their own security.

It is said that for every complex problem, there is a simple and elegant solution that is wrong. For crime, the simple answer is, "We need more cops and we need more prisons." Though extremely popular right now with politicians, this approach will ultimately do little to improve public safety. The best police force in the world cannot make safe a community in which people have no regard for the lives or property of others. Without question, swift and sure punishment of criminal activity is an important component of an effective crime policy. But the best defense against crime is not a thin, blue line, but a community of individuals respectful of others.

There is a great deal that the government can and should do to improve public safety, but first it must recognize that it needs help. Restoring public safety demands a renewed partnership between the police and the community. Police must reacquaint themselves with the people in the communities they serve, and communities must recognize that the brunt of the task of policing a free society does not lie with the police, but with citizens themselves.

COMMUNITY POLICING

From the time of America's founding, law enforcement has had a strong neighborhood foundation. In the early years of the Republic, male citizens in large U.S. cities were required to stand watch at night with no pay. Throughout most of America's history, in fact, citizens were expected to police their communities themselves—at least part time—as they went about their daily lives. The job of police officers was to support the community in keeping the peace.

Alexis de Tocqueville, who was particularly impressed by this, wrote, "In America, the means available to the authorities for the discovery of crimes and arrest of criminals are few. . . . Nevertheless, I doubt whether in any other country crime so seldom escapes punishment. . . . During my stay in the United States I have seen the inhabitants of a country where a serious crime had been committed spontaneously forming committees with the object of catching the criminal and handing him over to the courts. In Europe the criminal is a luckless man fighting to save his head from the authorities. In America he is an enemy of the human race and every human being is against him."

Direct community involvement doesn't mean vigilantes stringing up violators. Urban anthropologist Jane Jacobs explains, "The first thing to understand is that the public space—the sidewalk and street peace—of cities is not kept primarily by the police, necessary as police are. Rather, it is kept by an intricate, almost unconscious, network of voluntary controls and standards established and enforced by the people themselves."

Except in extremely small geographic areas, it is not

WILLIAM D. EGGERS *is the director of the 21st Century Government Project and the Privatization Center at the Reason Foundation.* JOHN O'LEARY *is the deputy director of the 21st Century Government Project.* *Their article is excerpted from their book* Revolution At the Roots: Making Our Government Smaller, Better, and Closer to Home. *©1995 by William D. Eggers and John O'Leary. Reprinted by permission of the Free Press, a division of Simon & Schuster, Inc.*

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economically possible to put a cop on every corner. No police department is large enough—nor should it be—to serve as an occupying army. A community must police itself. There is no way that New York City's 37,000 police officers can control the city's 7.5 million residents. The police are there to help. For much of America's history, this was understood.

In the 1960s, however, the public began to forget its role in controlling crime and grew increasingly dependent on the police. Police departments became more professionalized and shifted their primary mission from peacekeeping to crime fighting. Rather than regular beats, foot patrols, and informal pressure on the unruly, police forces increasingly used motorized patrols, radio dispatch, and rapid response as their main tools. In the terminology of television culture, the "Andy of Mayberry" model was replaced by the "One-Adam-Twelve" approach.

Americans began to think of crimefighting as the job of police. The riots of the 1960s showed in violent detail how America's historic partnership between police and community had broken down. Police officers—often in squad cars or behind desks at headquarters—were spending more time with other officers than with citizens. The new policing methods had the effect of divorcing them from the community. The divorce was mutual: Many communities stopped policing themselves.

This alienation left everyone worse off. Americans are more dissatisfied with their police departments than ever before, and the police are straining under the weight of massive problems they are powerless to handle alone.

Swift and sure punishment for criminals is important, but we shouldn't fool ourselves into thinking that the courts can make us safe, any more than the police can. We will never really get a hold on crime in America until we move back to a society where kids in trouble can be turned around before they get in more trouble and are sent away to prisons to become hardened criminals. "The total impacts [of public policy on crime] are not going to be that great in a free society," says James Q. Wilson. "A free society depends on the conscience and reputations of individuals and the social norms of communities to maintain order. That is what has collapsed in America."

To use an analogy from the manufacturing world, we can't afford to depend on an outside referee to detect and fix the defective products of our society; far better to create a system that isn't producing so many defects in the first place. From this perspective, product quality is no longer the exclusive responsibility of the inspectors in the quality department; rather, it's everyone's concern. Families come first, police and courts follow.

With its emphasis on crime prevention, community policing can be a part of the total picture. "We currently see ourselves as feeding the criminal-justice system," says police chief Daryl Stephens of St. Petersburg, Florida. "What if we saw our primary responsibility as starving it?"

At its heart, neighborhood policing recreates the partnership between the police and the community. In essence, the police tell the community, "We will help you do your job." Variations of the idea are being introduced all over the country, from Jacksonville to Madison to Seattle.

For community policing to work, the neighborhoods have to be willing to help themselves. Explains San Diego police officer Jim Coleman, "It is not the teacher's fault, it's not the police officer's fault, it's not the court's fault. The community has to recognize it has a responsibility for governing its own value standards. . . . People choose the way they want to live, and police can't remove that responsibility. The police can't come in and restore order if the community doesn't raise its own value standard."

San Diego has led the nation in embracing a partnership with neighborhood groups, citizen patrols, and volunteer "officers" (see sidebar page 7). To be sure, in America's toughest communities, where neighborhood control has been overrun by gangs, drug dealers, and a general sense of lawlessness, community policing of the San Diego model may not be enough. Community policing works best in the communities still controlled by law-abiding residents, not criminals. In the neighborhoods where criminals now hold sway, cops will be needed to help law-abiding citizens—a majority in even the worst inner-city neighborhoods—regain control and come out from behind their locked doors to augment the police presence. In the long run, however, community members themselves must take responsibility for making their neighborhoods unfriendly to criminals.

Street Patrols

A key component of community policing is getting more cops back on the neighborhood beat. "Beat integrity," the practice of charging a small group of officers with responsibility for a small area, has hardly been seen since the 1950s. Patrols can be conducted on foot, on bike, in a car, or some combination of these. The beat system increases the connection between law-abiding citizens and the police and gives citizens opportunities to express their concerns.

This sense of connection is evident in the community policing of officer Mike Elder, whose beat for the last two years has been a three-square-mile, lower-middle-class area on Indianapolis's south side. Elder's beat includes numerous vacant lots, some boarded-up buildings, and two of the city's worst public-housing projects. As in many cities, Indianapolis's urban sprawl makes it impractical for Elder to patrol his entire beat on foot. However, he makes up for this by spending a good part of each day walking around the housing projects and the neighborhood parks, checking in with store owners, and maintaining open office hours at his field office in the Clearstream housing project.

Elder is a reassuring presence to public-housing residents tired of living in fear. Before Elder set up shop at Clearstream, says one resident, "there would be gunfights in the project in the middle of the street in broad daylight." Another Clearstream resident, a single mother, says, "Before Mike came in, I wouldn't dare let my kids play outdoors because of the shootings and drug deals going down at all hours of the day and night. People living in projects want a normal life, too—and we're getting there." After Elder started his beat, the number of service calls from the Clearstream projects to the police dropped from 1,500 in 1991 to 550 in 1993.

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San Diego's Trailblazing Example

Community policing demands that both police and citizens accept responsibilities. The community's contribution can take many forms, from setting up community watches and getting landlords to screen potential renters to cleaning up vacant lots, reporting suspicious behavior, and making sure teenagers don't roam the streets. If citizens don't take responsibility for the safety of their own community, the police can do little to help.

San Diego's bold effort to involve citizens in public safety is unheard of among big cities. One San Diego official related this story: "I told a group of our officers that we were planning to have civilian volunteers take crime reports and collect evidence in cases of petty thefts. About three-quarters of them were nodding their heads, saying, 'Yeah, that makes sense.' If I tried that in New York or Chicago, they'd laugh me out of the room."

At San Diego's Eastern Division police headquarters, a group gathers around a conference table regularly to discuss better ways to patrol a certain neighborhood. But these blue-shirted peacekeepers aren't police officers. They are gray-haired volunteers of the Retired Senior Volunteer Patrol (RSVP), a major component of San Diego's commitment to neighborhood policing.

"The partnership between the community and our department really works," says police captain Dan Berglund. In addition to 272 sworn officers, Berglund's division relies on 115 senior volunteers, 20 reserves, and 40 other resident volunteers. "Their influence in their own community has been extremely beneficial," says Berglund.

Neighborhood policing requires a fundamental change in the department's operating philosophy. The police shift their attention from rapid response to putting more officers out on regular beats, where they can help the community solve public-safety problems. Neighborhood policing also entails much greater use of volunteers and soliciting the concerns of the citizens. In the language of Tom Peters, neighborhood policing means "getting close to the customer."

San Diego uses volunteers in a wide range of nonconfrontational situations, such as towing cars, collecting evidence (including fingerprinting), and checking on the homes of absent neighbors. Instead of assigning a uniformed officer to spend, say, 45 minutes writing a report for a petty theft, San Diego uses volunteers trained at the police academy. This frees up officers for problems that require their special skills. "So long as volunteers are given meaningful work, and welcomed as a partner in the process, I will have an unlimited number of people in any community in this city to do that," Berglund said.

The SDPD is unusual in its openness to citizen input and volunteer assistance. Admittedly, San Diego is blessed with many retirees. Although it's the sixth-largest city in America, San Diego's police force has a small-town feel. In most big cities, powerful police unions would oppose the use of community volunteers for police work. But San Diego welcomes them.

This tolerant culture, which took years to develop, is due partly to Police Chief Jerry Sanders's deep commitment to community policing. San Diego is the first large city to adopt a department-wide approach to community policing. Nearly every SDPD police officer belongs to a team assigned to a discrete geographical area and charged with developing a close relationship with that neighborhood. "We are using persuasion rather than coercion to get people on board," says Nancy McPherson, who served as San Diego's neighborhood-policing coordinator before moving on to the Seattle police department.

Police departments customarily resist community policing because cops fear they will become social workers rather than crimefighters. The department dispelled that idea early on. After getting to know the residents on their beat, two San Diego cops trained in neighborhood problem-solving learned that a gang had taken over a particular section of an apartment complex. Through close relations with the building's law-abiding residents, they gathered the evidence needed to obtain search warrants. The bust that followed—complete with SWAT teams and swarms of patrol cars—put an end to the worry that neighborhood policing was soft on crime.

With an intense awareness of the neighborhood, community-based officers can stop crimes before they happen. The officer on the beat hears gossip from casual, informal contact with people. Elder knows most of the residents at his two housing projects. He can count on a dozen or so residents in each project to keep him informed of impending trouble by calling him on his beeper. If any drug dealing is taking place or any strangers are causing trouble, he'll know within a day.

Assigning officers to regular beats and emphasizing problem-solving can also prompt residents of troubled minority areas to look more favorably on the men and women in blue. Before Elder was assigned to their beat, residents of Clearstream didn't much trust the police. Residents only saw cops when they were responding to incidents, and viewed them as outsiders. With steady contact, Elder has built a relationship of trust. "If we tried to take Elder out of that beat, the residents would be marching on city hall within hours," jokes Michael Beaver, Indianapolis's director of public safety.

Most cops loathe beat patrols. Many police officers—particularly those in middle management—would prefer the safety of their desk jobs over venturing out onto the streets. Hitting the pavement is seen as a demotion by veteran cops, many of whom have worked hard to get off the beat and win an assignment to a specialty unit or to administrative work.

Jersey City Mayor Bret Schundler learned the hard way that the opposition to community policing can be intense. When he was elected in 1992, just one cop worked foot

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patrol in Jersey City; Schundler wanted 300. The force hardly embraced the idea. "Comfortable jobs in all city departments were given as a reward for political service and loyalty," wrote Schundler in *Policy Review* (Summer 1994). "The patronage system has made assignments to street patrol intolerable."

The new mayor found himself battling with Jersey City's police union. When Schundler learned that two police officers spent their days delivering interoffice mail, he had them reassigned to street patrol. The police union filed a lawsuit to prevent the move, citing a contract clause that states: "Police work cannot be diminished except through contract negotiation." Like most people, Schundler can't understand how having officers patrol the street diminishes police work. He is fighting the suit.

Schundler cites union contracts—supported by state arbitration rules—as his biggest barrier to successful policing. "Our crime problem is not the result of our spending too little on policing," he says, "but rather of our getting too little policing for our money—and the root cause of this problem is non-local government interference in police department management."

Combating Disorder

Many urban areas are marked by evidence of physical decay: boarded-up buildings, vacant lots strewn with litter, and graffiti-covered walls. This sense of community despair creates an aura of lawlessness that encourages criminal behavior.

In a 1982 *Atlantic Monthly* article titled "Broken Windows," James Q. Wilson and George Kelling argued that disorder in a community, if left uncorrected, undercuts residents' own efforts to maintain their homes and neighborhoods and control unruly behavior. "If a window in a building is broken and left unrepaired," they wrote, "all the rest of the windows will soon be broken. . . . One unrepaired window is a signal that no one cares, so breaking more windows costs nothing. . . . Untended property becomes fair game for people out for fun or plunder."

If disorder goes unchecked, a vicious cycle begins. First, it kindles a fear of crime among residents, who respond by staying behind locked doors. Their involvement in the neighborhood declines; people begin to ignore rowdy and threatening behavior in public. They cease to exercise social regulation over little things like litter on the street, loitering strangers, or truant schoolchildren. When law-abiding eyes stop watching the streets, the social order breaks down and criminals move in.

"Stable neighborhoods can change in a few months to jungles," declare Wilson and Kelling. Disorder also can have dire economic consequences. Shoppers will shun an area they perceive as being "out of control." One study analyzing crime in 30 different areas found that the level of disorder of a neighborhood—more than such factors as income level, resident turnover, or racial makeup—was the best indicator of an area's lack of safety.

For decades, most big-city police departments have devoted little effort to combating disorder. By allowing an accumulation of small infractions, this neglect creates an environment that generates big infractions.

The community-policing movement is beginning to change this. Community policing emphasizes giving neighborhoods a greater say in determining police priorities, a surefire way of bringing issues of physical and social disorder to the top of the police agenda. An important part of a community patrol officer's job is enforcing a community's norms of tolerable behavior and order. Beat officers can't impose their personal rules on a community, but they can help a community maintain its own standards. "You have to be given the latitude to enforce the laws in different ways in different communities," says Indianapolis's Elder.

Although calls for order maintenance have historically been associated mostly with white middle- and upper-class neighborhoods, today some of the loudest voices are coming from poor minority communities. Says Ace Backus, a Milwaukee community organizer, "In the nice white communities don't be drunk on the street, don't be throwing down litter, the cops will stop you. In the middle of the black ghetto you can do that and the police will drive past. It's reverse discrimination."

Problems, Not Symptoms

Conventional policing is incident-driven: A citizen calls 911 to report a crime and then the police show up. Much of the time, all officers can do at this point is take a report. By reacting to crime rather than trying to prevent crime, police treat only the symptoms, not the root causes of problems. The key to improving New York's subway was the emphasis on preemptive problem solving, an example of what policing experts refer to as "problem-oriented policing" (see sidebar page 9).

Former San Diego Police Chief Bob Burgreen frames the issue this way: "Random patrol duty is little better than sleeping on duty."

In one large city, for example, a trucking company had 32 trailers burglarized in less than 18 months. A predictable routine developed: The owner would report the crime, the police would visit the yard, take a statement, and then wait for the next call from the owner. In desperation, the owner finally threatened to move his $13-million company out of the city unless something was done to stop the stream of break-ins.

This prompted the police department to abandon business as usual. An outside consultant was brought in, and police soon determined that the physical layout of the trucking yard was encouraging the break-ins. The officers talked the owner into improving the lighting and raising the fence. Police then worked with other city agencies to erect a barricade between the truck yard and the adjacent vacant city property that was being used as an escape route. Problem solved.

Some level of problem-solving occurs in every police department, but it is typically done in a haphazard fashion. San Diego is alone in making problem-solving a focal point of each police officer's daily duties. Because it depends on identifying recurring patterns of disruptive activity, problem-oriented policing depends on good information.

San Diego's crime analysis unit has set up a sophisticated computer tracking system that officers can tap into to get information on 60 types of problems, previous

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attempts to solve specific problems, and recurrent problems in different geographical areas. While problem-solving gives police officers some tools and the analytical framework for approaching community safety problems, community involvement is still a key component. "There are no long-term solutions to problems unless the community is involved," says Nancy McPherson, formerly the city's neighborhood-policing coordinator.

As already noted, people tend to equate the frequency of crime in an area with how the external environment "looks" and "feels." Visible disorder sends warning signals to our brains of impending danger. Disorder is a sign that the social mechanisms of control that characterize healthy neighborhoods have broken down, which in turn encourages lawlessness. To build safer neighborhoods, individuals and communities must exercise control of the physical environment in which they live.

Empowering Landlords

Police officers appreciate the role that landlords can play in keeping a neighborhood strong and safe. Historically, landlords in low-income, working-class neighborhoods adhered to the neighborhood's set of norms and refused to rent to individuals who, in the landlord's judgment, would not be a positive force in the neighborhood. This is because landlords, for economic reasons, desire essentially the same thing as neighbors do for social reasons: responsible and conscientious tenants who will respect the property of others.

In recent years, government regulations, civil-rights laws, and court rulings have made it almost impossible for landlords to turn away dubious renters or to evict destructive tenants from their apartments. The unintended consequence? Many working-class neighborhoods have been ripped apart by rental units that become crack houses.

Giving homeowners control of their property can help reduce crime. Almost by accident, the city of Milwaukee came up with a simple yet effective way for government to assist, instead of frustrate, landlords who want to maintain neighborhood norms. Marty Collins, a 15-year city employee, was looking for a way to improve the city's drug-addiction prevention program. Knowing that most drug dealing in Milwaukee occurred out of rental properties, Collins reasoned that the only people that really could control the situation are the landlords.

Collins surveyed Milwaukee landlords and found that 70 percent of them reported having had destructive tenants at one time or another, yet virtually no landlords were using tenant screening techniques. Why not? "For fear of getting their butts sued," says Collins. Milwaukee's landlords were largely unaware that legal methods were available to enable them to discriminate against prospective tenants with destructive histories. By taking simple precautions, such as requiring favorable recommendations from previous owners, running a credit check, and visiting the current home of prospective renters, homeowners can eliminate the bad apples and help keep their neighborhoods safe.

Most landlords were also unaware of three Milwaukee companies that provide a listing of all tenants who have been previously evicted from rental properties. Milwaukee now informs all landlords how to be more discriminating.

While Milwaukee deserves credit for giving landlords the legal leverage they need to protect their property, the

New York City's Subway

For years litter, graffiti, vagrants, and panhandlers had been turning New York City's subway into a vaguely sinister netherworld. The transit agency's first reaction to this problem was standard public-sector misjudgment: Add more "inputs." Additional police officers were assigned to patrol the transit system. The results were unimpressive, and riders remained frightened.

In the mid-1980s, David Gunn, the new transit authority president, decided to wage a war on the graffiti that covered nearly every square foot of every city subway car. Vast amounts of time and money had already been invested in increasing patrols and surveillance to reduce graffiti—to no avail. Regardless of how many "taggers" were caught, there were always more. The overburdened courts never gave taggers more than stern lectures.

A deeper analysis of the graffiti problem revealed that taggers got a thrill from viewing their markings on future trips. Denied the satisfaction of beholding their "art," Gunn figured, many taggers would simply stop. He made the removal of graffiti from subway cars a top priority. The strategy worked. On May 12, 1989, five years after the launch of the Clean Car Program, the last of the graffiti-covered cars was removed from service. The Big Apple's notorious subway cars were among the cleanest in the world.

But removing the graffiti only solved part of the problem. New Yorkers still feared the disorderly people who always seemed to be hanging around the subway.

In 1990, the city hired William Bratton (now the city's police commissioner) as the new chief of transit police. "We understood early on that the problems of crime, disorder, and fare evasion were deeply interrelated," Bratton says, "and that therefore we would have to form a coherent strategy to deal with them." Bratton discovered that fare-jumpers not only cost the transit system more than $120 million a year in income, but also committed much of the crime and unruly behavior in the subway. He organized plainclothes "sweep teams" of four to six officers to catch fare-evaders. Says Bratton, "The sweeps produced some interesting results. One of every six fare-evaders we stopped either was carrying a weapon or was wanted for another crime on an outstanding warrant. That was an incredibly high statistic, and it made us realize that by fighting fare evasion, we were also making an impact on crime."

At the same time, Bratton set out to reduce the intimidating behavior of panhandlers and homeless people in the subways. Monthly ejections from the subway went from 2,000 to 16,000. In Bratton's first two years, the number of felonies in the subway fell 30 percent.

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city sometimes goes too far in holding landlords responsible for the actions of their tenants. If police receive two complaints about drug dealing at a rented property, Milwaukee undercover police will attempt a drug buy. If successful, the city sends a notice to the landlord instructing him or her to take actions to stop the property from being used for drug dealing. If the problem persists, the city takes the landlord to court and can ask for the property to be forfeited.

In essence, Milwaukee is asking the landlord to control their tenants' behavior or risk losing their property. Empowering landlords by allowing them to choose to whom they will and will not rent is one thing. Asking them to be responsible for the actions of their renters is quite another. Providing landlords with the legal assistance to screen and evict disruptive tenants is a step in the right direction, but we shouldn't expect landlords to act as chaperones for their tenants.

This trend toward relying on landlords to discipline tenants is ironic, for in many cases the most irresponsible landlord of all is the government. Much of the worst crime in America takes place in or around government housing projects. When Reuben Greenberg became the police chief of Charleston, South Carolina, in 1982, he thought it ludicrous that the government routinely rented units to the lowliest criminals of society. "No other landlord has to rent to child molesters, robbers, rapists, and arsonists. Why should people in public housing have to live with them?" asked Greenberg.

Working with city housing authorities, Greenberg set out to make the city's public housing the last place criminals would dare to set up shop. Prospective tenants were screened for criminal records. Tenants who engaged in illegal behavior were swiftly evicted. Through mostly common-sense measures that any sensible landlord would take, Charleston's public housing projects are now "the safest places to live in Charleston," says department spokesman Charles Francis.

Closing off Streets

Americans like to control their space. With their long driveways, high walls, and security systems, wealthier neighborhoods have never been known for their accessibility to outsiders. Wealthy city-dwellers have "doormen" that provide security for their apartment buildings. Middle-class suburbs have their own ways of discouraging strangers, including myriad cul-de-sacs and white picket fences. Residential community associations (RCAs) have taken the concept of designing for safety one step further. The typical RCA has walls, gates, cul-de-sacs, security systems, and an endless series of speed bumps.

In contrast, poor city neighborhoods are typically laid out in a grid format. "By allowing for lots of through traffic, grids compromise a neighborhood's integrity," says Judy Butler, the city of Houston's neighborhood coordinator. The grid format, while pleasing to city traffic engineers, makes neighborhoods susceptible to drive-by shootings and random through-traffic.

While some criticize the suburbs and RCAs for having a "fortress mentality," these communities provide residents with the security they desire, providing physical barriers that give people greater control over their living environment. These barriers not only keep strangers out, they mark the physical boundaries that define communities.

"Why not try to redesign the urban area to recapture the quality of life in the suburbs?" asks Oscar Newman, a city planner and architect. Newman is the country's leading expert on and proponent of creating "defensible space" in urban neighborhoods by closing off streets. Street closures, Newman has found, give residents greater control over the security of their neighborhood. Closures also broadcast a distinct message to potential criminals: This community is profoundly serious about deterring crime and anti-social behavior.

St. Louis has a long tradition of street closures. Beginning in the late 19th century, many streets in the wealthiest neighborhoods were deeded to residents instead of the city. Each of the streets was represented by an association that often also owned the sewers and water mains. At the time, St. Louis had shoddy public services, so the private streets were a way of attracting homebuyers by assuring them of reliable services such as water supply and street lighting.

In the 1950s, St. Louis was in decline. Crime was rising, property values were falling, and much of the middle class was fleeing to the safer and cleaner suburbs. Left behind were poorer residents, less likely to be homeowners and more likely to be transient. To stop the flight of middle-class homeowners out of the city, the city began to revive its private street program. Neighborhoods of all income levels were allowed and encouraged to petition the city to convert their public streets to private ownership. Many middle-class neighborhoods took the city's offer: They formed homeowner associations, put up gates, and assumed the costs and responsibilities of maintaining the streets themselves.

Since the mid-1970s, more than 1,000 St. Louis streets have been closed off and privatized. By making these neighborhoods more distinct, street closures have made it easier to identify intruders and keep out unwanted visitors. The result: lower crime rates and higher property values compared to adjacent neighborhoods, according to Newman. It also has made the neighborhoods more cohesive, as they become safe places for children to play and conduits for social activity. "With traffic flow limited to an occasional moving car, the street has become an extension of the front yards of the abutting houses: an area where children play and adults can meet and socialize," writes Newman. Street closures can restore the balance between mobility for cars and livability for residents.

Until recently, St. Louis was about the only city that made use of street closures in urban settings. But the increasing levels of crime, gang activity, and drive-by shootings throughout urban America are prompting other cities to experiment with street closures. Cities as diverse as Dallas, Chicago, Houston, Dayton, and Fort Lauderdale are aggressively closing off streets. Though St. Louis is unique in allowing a transfer of ownership to residents, these urban enclaves are proving an effective way for a community to regain control of its environment.

Dayton, Ohio, is home to one of the country's most ambitious street-closure experiments. Like many aging

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urban communities, Five Oaks, an integrated, lower-middle-class neighborhood in Dayton, found itself in decline. Homeowners were leaving, rental properties were poorly maintained, and drug dealers and prostitutes had set up shop. Located near the freeway, Five Oaks was an ideal location for crack houses. Experts predicted that within two years much of the neighborhood would be a disaster area.

In 1992, desperate neighborhood leaders turned to street closures. The city called in Oscar Newman to assist. A year later, 34 streets and 26 alleys were closed off in Five Oaks. Neighborhood residents divided Five Oaks into ten mini-neighborhoods to enable law-abiding residents to confront the problems in their immediate area.

Only a year after the streets were closed, substantial improvement was visible. Cut-through traffic, previously a big problem in the neighborhood, fell by two-thirds. Automobile accidents and traffic speed levels also declined dramatically. After dropping the previous two years, housing sales surged 55 percent, while the average purchase price of a home increased 15 percent. Violent crime was cut in half; overall crime plunged by 26 percent. Most importantly, Five Oaks residents felt much safer and in control of their immediate surroundings. "I have four little kids," said one neighborhood homeowner. "My kids can now play out in the yard. It's been a blessing for my family."

Reclaiming Public Parks

Another problem of "space" in many cities (and some suburbs too) are local parks. Instead of serving as a place for kids to play and families to picnic, many parks have become gathering places for gangs and drug dealers. Instead of serving as a common area that knits the community together, many neighborhood parks are tearing communities apart.

City officials refer to such parks as "orphan" parks because there is no real or perceived "ownership" of the park, and so no one takes care of it. City hall cannot possibly provide the same level of attention as the people who use the park every day. Local involvement is needed to make small parks a positive force in the neighborhood; only neighborhood residents, the people who use the park, can provide this.

The inspiring story of San Antonio's Lee's Creek Park proves the point. "It's not every 41-year old that can leave a legacy for his children," says San Antonian Bill Lucas as he looks over the plans for Lee's Creek Park, a project that engrossed him for over a year. Lucas does not work for the city planning or recreation department—he is a sales manager for Bekins Moving Systems.

Donated by the Lee family to the city, the park is located in a declining area of the city with swelling gang problems. After 10 years, it was still little more than a vacant lot. Then along came Bill Lucas and the local chapter of Optimist Club International, the 75-year-old "friends of youth" organization. In conjunction with around 35 neighborhood families, the Optimist Club transformed the weed-infested vacant lot into a thriving community park—without the aid of taxpayer money. Creating Lee's Creek Park was a true volunteer effort. A bridge over the creek was a gift from an Optimist Club member in memory of his wife. A running track was donated by a construction company. The sweat to clear the lot and plant the trees was contributed by neighborhood residents and even some nonresidents, including Mrs. Lee herself. "All we are doing is recreating *in a small way* neighborhood involvement like it was in the 1800s in America when people used to pitch in and help build their neighbors' houses and barns," says Lucas.

When the park was finished it was turned back over to the city, which agreed to maintain it. Lucas is confident the park will not fall victim to "orphan park" syndrome. "Our idea is for the neighbors to create ownership opportunities for themselves," he said. To do so, ownership committees were created and vested with control of certain blocked out sections of the park that they are responsible for beautifying and maintaining. The sense of ownership is critical. "If the park were given to us we wouldn't respect it," says Lucas. "We can see it in our own children. Make them earn it, and they own it."

Turning over partial ownership or management of city parks to nonprofit groups and neighborhood associations is often the best way to ensure they remain a public asset. New York City's Neighborhood Open Space Coalition has assumed control of hundreds of abandoned lots and parks in this way, turning many dangerous eyesores into gardens. Nearly one-fourth of the city's nearly 1,500 public parks are now cared for by community associations under the Operation Green Thumb program.

Private groups usually have more success ensuring the park is in constant use, which is the key to keeping a park safe. The nonprofit Central Park Conservancy has raised more than $100 million for New York City's Central Park since its founding in 1980. It has taken over the care of trees, lawns, and plants and provides more than half of the park's operating costs. By 1989, 72 percent of Central Park users said the park felt safer after the conservancy got involved. Crime dropped 59 percent and robberies plummeted 73 percent. The drop in crime is attributed to the large increase in park activities put on by the conservancy. Good uses drove out the bad uses.

Crisis Point

What is the future of public safety in America? One possibility is that we will continue to ask police to attempt the impossible: To create safe communities without the communities' help. Under this scenario, there will be more cops, more prisons—and more crime.

The other possibility is more appealing. We can learn from America's most innovative public-safety models—San Diego's problem-oriented, neighborhood policing; New York's subway-disorder reduction; Milwaukee's landlord empowerment policies; and Dayton's Five Oaks street closures—to develop a new vision of policing America's neighborhoods and downtowns where police departments are closer to the communities they serve and citizens and communities take a more active role in protecting their safety.

Under this scenario, America could see a future with fewer police and more security. We are fast approaching a crisis point in our country as crime and fear of crime paralyze our nation. How we respond will go a long way in determining what we become as a nation.

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ARRESTING IDEAS

Tougher Law Enforcement is Driving Down Urban Crime

JOHN J. DIIULIO JR.

Serious crime is declining in many big cities across America. That's the good news. Meanwhile, the country's largest and most violent cohort of young males will soon reach its crime-prone years. That's the bad news. But demography is not fate. Smarter law enforcement and tougher sentencing policies explain much of the recent drop in crime, and can minimize the damage from the next crime wave.

Between 1993 and 1994, the violent crime rate declined by 10 percent or more in eight of the 10 cities with the highest violent-crime rates (Miami, New York City, Los Angeles, Tallahassee, Baton Rouge, Little Rock, Jacksonville, and Pueblo, Colorado). In many cities, a sizable reduction in homicides accounts for much of the fall in these rates. For example, the number of murders in Atlanta, Chicago, and New Orleans together plummeted by 17 percent during the first half of 1995 compared with the same period a year ago.

New York City and Houston have enjoyed truly phenomenal drops in serious crimes, including murder. In 1992 and again in 1993, more than 1,900 homicides were committed in the Big Apple. But in 1994 New York City's murder count fell to 1,581. Through July 1995, it suffered fewer than 700 murders, and it continued to show declines of 10 percent or more in robberies, burglaries, and most other serious crimes. Likewise, the number of people murdered in Houston declined by 32 percent during the first half of 1995 compared with same period a year ago. Rapes in Houston decreased by 21 percent, robberies by 15 percent, and the overall violent crime rate by 7 percent.

While New York City and Houston are leading the pack, other cities are catching up. During the first half of 1995, for example, the overall crime rate was down by more than 16 percent in San Francisco, 10 percent in San Antonio, and 6 percent in both Los Angeles and Philadelphia. And the number of murders declined by more than 6 percent in Philadelphia and Los Angeles, 9 percent in Detroit, and 10 percent in Boston and St. Louis.

What is going on here? Some criminologists dismiss the recent improvement in the crime rate as a mere statistical fluke. But it is hard to imagine that these downward trends, occurring in consecutive years in given jurisdictions, could have happened by chance. Others insist that the slide in crime rates is greased by a dwindling population of teenage boys. There is something to this claim, but it ignores the inconvenient fact that Houston and some other places with growing populations of at-risk youth have nonetheless experienced sharp reductions in crime.

Finally, a few criminologists have rushed to relate the dive in crime rates to everything from a sudden surge in the efficacy of gun control laws (which is patently absurd) to changes in the patterns of drug use (for example, the decline in crack-cocaine use which, they insist, has had nothing to do with anti-drug law enforcement). One much-quoted criminologist has even declared, "What goes up must come down."

BRATTON'S LAW: ENFORCEMENT COUNTS

In many cities, the decline in crime rates can be explained at least in part by law-enforcement efforts that capitalize on community crime-fighting initiatives and take bad guys off the streets. I call this explanation Bratton's Law in honor of New York City's police commissioner, William Bratton. Like most veteran professionals in the justice system, Bratton understands perfectly well that crime rates are not determined solely by what cops, courts, and corrections agencies do. But his impatience with criminological cant about the inefficacy of policing practices and sentencing policies on crime rates is both ennobling and enlightening. Three brief examples illustrate Bratton's Law in action.

Jacksonville. In July 1991, Harry L. Shorenstein became state attorney for the Fourth Judicial Circuit in Jacksonville, Florida. At that time Jacksonville was besieged by violent crime, much of it committed by juvenile offenders. In the year before Shorenstein arrived, juvenile arrests had risen by 27 percent, but most young habitual criminals were released quickly. Jacksonville's finest were doing their best to remove serious young criminals from the streets, but the rest of the system was not following suit.

Then, in March 1992, Shorenstein instituted an unprecedented program to prosecute and incarcerate

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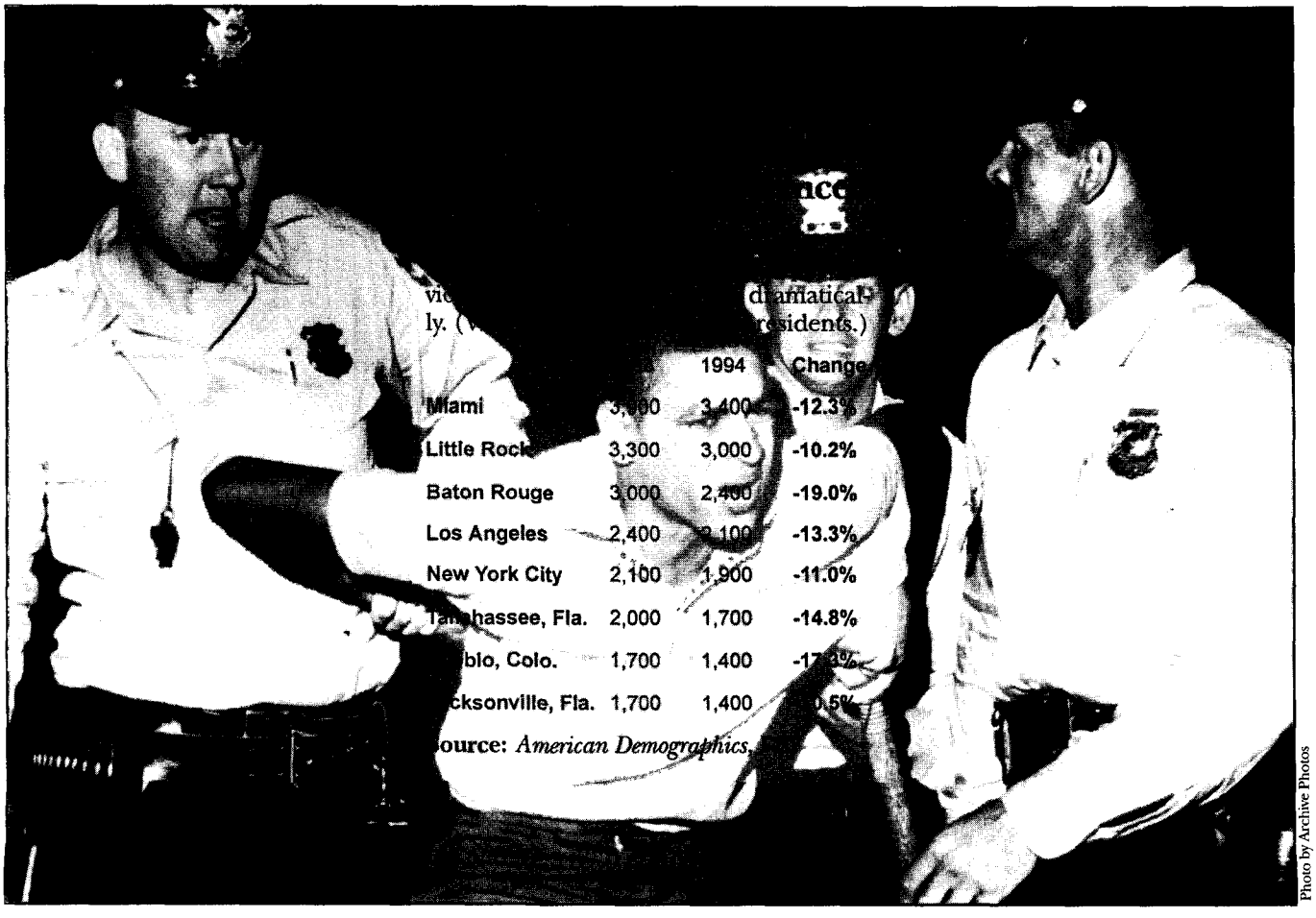
dangerous juvenile offenders as adults. In most parts of the country, juvenile criminals for whom the law mandates adult treatment are not actually eligible for state prison sentences and are routinely placed on probation without serving any jail time. But Shorenstein's program was for real. He assigned 10 veteran attorneys to a new juvenile-prosecutions unit. Another attorney, funded by the Jacksonville Sheriffs Office, was assigned to prosecute repeat juvenile auto thieves.

By the end of 1994, the program had sent hundreds of juvenile offenders to Jacksonville's jails and scores more to serve a year or more in Florida's prisons. Jacksonville's would-be juvenile street predators got the message, and the effect of deterrence soon appeared in the arrest statistics. From 1992 to 1994, total arrests of juveniles dropped from 7,184 to 5,475. From 1993 to 1994, juvenile arrests increased nationwide and by over 20 percent in Florida. But Jacksonville had a 30 percent decrease in all juvenile arrests, including a 41 percent decrease in juveniles arrested for weapons offenses, a 45 percent decrease for auto theft, and a 50 percent decrease for residential burglary. Although Jacksonville still has a serious violent crime problem, the number of people murdered there during the first half of this year declined by 25 percent compared with the same period a year ago.

Houston. Almost a thousand officers have been added to the city's police force since 1991. Led by Police Chief Sam Nuchia, Houston has a cost-effective police overtime program that puts more cops on the street when and where they are most needed. Residents of Washington, D.C., which fields the highest number of police officers per capita of any major city, know that more police manpower does not necessarily produce less crime or better police performance. But in Houston, Nuchia has used the additional manpower to jump-start community anti-crime activities.

To cite just one example, Houston's Citizen Patrol Program has operated in more than a hundred of the city's neighborhoods. Among other things, thousands of citizen patrollers have observed and reported suspicious or criminal behavior, from assaults to narcotics dealing to vandalism. Many once-troubled neighborhoods have gone as long as three consecutive months without needing to call for police service. Indeed, two recent studies found that Nuchia's enforcement efforts not only contributed to Houston's falling crime rates, but also improved police emergency response times, raised police productivity, and reduced citizens' fear of crime.

New York City. Like Houston, New York City has greatly expanded its police force. Since 1990, the NYPD has grown by 7,000 officers. Under Bratton, police have been directed to crack down on public drinking, graffiti, vandalism, and other public disorders. The NYPD has beefed up action against street gangs and drug traffickers, returned to a policy of frisking suspects for guns and other weapons, and redoubled precinct-level efforts on a wide



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range of community-policing projects.

In the process, Bratton has promoted a new breed of precinct commanders and made them responsible for finding innovative, cost-effective ways of serving citizens and cutting crime in their neighborhoods. Despite recent corruption scandals, the precinct-based management system is working, NYPD morale is high, and New Yorkers are getting results that range from fewer aggressive panhandlers to fewer shootings and murders.

Criminologically Correct

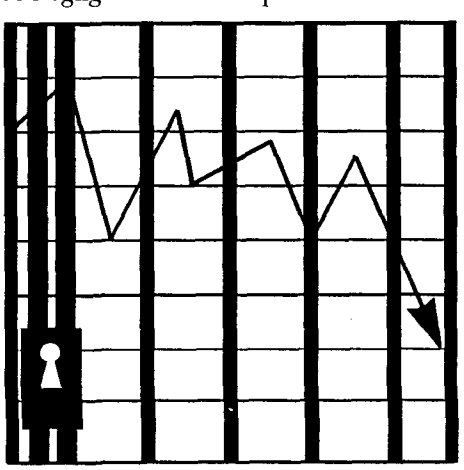
Why, then, are many criminologists so unwilling to admit that law enforcement can cut crime? Part of the answer is that more than a dozen major empirical studies over the last two decades have failed to demonstrate either that police manpower and crime rates vary inversely or that particular types of community-oriented policing practices prevent crime. The most famous of these studies is the Kansas City, Missouri, "preventive-patrol" experiment.

For a year in the early 1970s, Kansas City was divided into three areas, each of which received a different level of auto patrol. The 1974 report on the experiment found that criminal activity, reported crime, rates of victimization (as measured in a follow-up survey), citizen fear, and satisfaction with the police were about the same in all three areas. Active auto patrol—beats where cars cruised the streets conspicuously two to three times more frequently than in the control areas—made no difference at all.

But academic experts who treat such negative findings as the final words on the subject are badly mistaken. George L. Kelling of Northeastern University, the father of the Kansas City research and many other major studies, recently cautioned his colleagues that "generalizing from a study about a specific tactic to other tactics or uses of police is inappropriate." As Kelling observed, "random preventive patrol by automobile for the purpose of creating a feeling of police omnipresence" is a relic of "mid-century policing tactics."

Kelling has scolded those "academic ideologists" in criminology who "do not let research interfere with their conclusions." He keenly characterizes as defeatist dogma their views that "crime stems from basic structural features of society, and until problems like homelessness, social injustice, economic inequalities, and racism are addressed, police impact on crime will be negligible."

As a matter of ideology, denying that law enforcement counts in cutting crime may be trendy, but the policy science of the subject remains far from settled. Following an exhaustive review of the empirical literature on policing, David H. Bayley of SUNY–Albany recently concluded that there has never been "a rigorous, clear-cut test of the association between the visible presence of the police and crime rates." Bayley is now in the early stages of a quasi-experimental study designed to test this relationship while controlling for demographic and other variables related to the incidence of crime. Such fine-tuned research on patrol presence, policing strategies, crime rates, and other key variables has become possible only in the past few years with the development of computer-assisted information systems for police dispatching and management.



Bayley's cutting-edge research will help to identify the general conditions under which tactics and increases in police manpower can curb public disorders and cut crime. For now, there is no solid evidence to dismiss, and every practical reason to uphold, Bratton's Law.

Wattenberg's Law: Prison Works

By the same token, there is tremendous empirical support for another proposition that many criminologists reflexively reject: Sentencing policies that keep violent and repeat criminals behind bars contribute mightily to reductions in crime.

I call this proposition Wattenberg's Law in honor of Ben Wattenberg, a scholar at the American Enterprise Institute and a nationally syndicated columnist. As Wattenberg has quipped, "A thug in prison can't shoot your sister." Whatever else incarceration buys us in the way of criminal deterrence, rehabilitation, or retribution, it most definitely pays dividends by preventing crimes that prisoners would commit if they were free.

The U.S. Bureau of Justice Statistics has reported that fully 94 percent of state prisoners have committed one or more violent crimes or served a previous sentence in jail or on probation. Between 1980 and 1993, violent offenders were the greatest contributors to state prison population growth.

Even so, today more convicted violent offenders are serving time on probation and parole than in prison. About a third of all violent crime arrestees are on probation, parole, or pretrial release at the time of their arrest. Recent studies by me and others estimate that most prisoners commit between 12 and 21 serious crimes a year when on the loose.

From 1980 to 1992, the aggregate violent-crime rate in the 10 states where incarceration climbed the most decreased by 8 percent. In the 10 states with the lowest increases in incarceration, violent crime soared, in aggregate, 51 percent. A study published in *Science* calculated that in 1989 alone, the increased use of imprisonment spared Americans an estimated 66,000 rapes, 323,000 robberies, 380,000 assaults, and 3.3 million burglaries. In a research report targeted against California's three-strikes law (life without parole for thrice-convicted felons), the RAND Corp. conservatively estimated that the measure would spare Californians about 340,000 serious crimes a year.

Nationally, state prisoners convicted of violent crimes who were released in 1988 had served an average of only 43 percent of their sentences in confinement. Violent convicts released in 1992 had served an average of 48 percent of their time behind bars. And violent offenders

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released from state prisons this year will have served, on average, 50 to 52 percent of their time in confinement. This slow but steady increase in incarceration is the result of a nationwide trend toward tougher sentencing policies, and has already spared millions of Americans from serious crimes.

It is not yet possible to calculate precisely how much tougher incarceration policies have contributed to falling crime rates in particular cities. But in explaining New York City's falling crime rate, consider the fact that roughly half of New York's state prison population, and an even larger fraction of its violent offender population, comes from New York City. Over the last decade, the Empire State's prison rolls have more than doubled, and the amount of time served behind bars by violent and repeat criminals has increased by as much as 50 percent.

VIOLENT CRIMINALS NOW SERVE 50 TO 52 PERCENT OF THEIR TERMS, UP FROM 43 PERCENT IN 1988.

DiIulio's Law: Be Prepared

Apparently, it takes a Ph.D. in criminology to doubt that keeping dangerous criminals incarcerated cuts crime and to wonder whether releasing any significant fraction of the nation's 1 million prisoners tonight would result in more serious crime tomorrow.

But criminologists are right about one thing: Americans are sitting on a demographic crime bomb. Most predatory street crimes are committed by men under 25. Today there are about 7.5 million males aged 14 to 17. By the year 2000, we will have an additional 500,000. About 6 percent of young males are responsible for half the serious crimes committed by their age group. Thus, in five years we can expect at least 30,000 more young murderers, rapists, and muggers on the streets than we have today. Worse, since the 1950s each generational cohort of young male criminals has committed about three times more crime than the one before. Despite the recent decline in murder rates, homicides committed by 14- to 17-year-olds between 1985 and 1993 increased by 165 percent (more for minority males). The next wave of homicidal and near-homicidal violence among urban youth is bound to reach adjacent neighborhoods, inner-ring suburbs, and even the rural heartland.

This crime bomb probably cannot be defused. The large population of seven- to 10-year-old boys now growing up fatherless, Godless, and jobless—and surrounded by deviant, delinquent, and criminal adults—will give rise to a new and more vicious group of predatory street criminals than the nation has ever known. We must therefore be prepared to contain the explosion's force and limit its damage.

While there is some room for reasonable disagreements about policy tactics—for example, whether the federal role in crime control should be expanded, or whether we should invest more in drug treatment or drug interdiction—any effective anti-crime policy must advance one or more of three interlocking anti-crime strategies: hardening targets, targeting the hardened, and targeting resources.

Hardening the Target. Over the last decade or so, most Americans have taken steps to make the places where they live, work, go to school, or recreate impervious to crime. People have moved out of high-crime neighborhoods, installed anti-burglary devices, made crime-sensitive investment decisions, and lectured their children to be mindful of dangers. Businesses and the 32 million Americans who now live in privately governed residential communities have erected security gates and employed more than a million private security guards.

Neighborhoods of every socioeconomic description have formed "town watch" associations and citizen patrol groups. And the poorest of the inner-city poor have battled the ACLU for the right to target-harden their homes, schools, and parks: They erect concrete barriers on streets frequented by drug dealers and prostitutes, evict convicted street thugs from public housing, install metal detectors, and institute random locker searches in public high schools, and more.

Though to a degree hard to quantify, such initiatives have contributed to recent decreases in crime rates and, over time, insulated us somewhat from the failures of our system of justice. But as the next crime wave approaches, we may well be nearing the limit of what private target-hardening measures can do to foster public safety.

Government at all levels, therefore, should do whatever can be done to bolster these protective measures. To offer just two of many possible examples, urban zoning decisions should begin to take into account the criminal consequences of permitting liquor outlets to be so heavily concentrated in high-crime, inner-city neighborhoods. Likewise, urban enterprise zones make sense as ways of giving *de facto* tax credits to businesses willing to locate in high-crime places.

Targeting the Hardened. At the same time, we must redouble our efforts to keep violent and repeat criminals behind bars. To consolidate and expand recent gains, we must be vigilant not only in pushing for truth-in-sentencing and three-strikes measures, but seeing to it that these laws are followed both in letter and in spirit.

Make no mistake: The counter-offensive against tougher sentencing policies is well underway. Aided and abetted by activist federal judges, prisoners' rights activists, journalists, and academic "experts," efforts are already being made to depict these laws as failures and to deny or disparage any suggestion that they have helped account for recent drops in crime rates.

But just ask the criminals. In California this year, within several months after the three-strikes law went into effect, an increasing number of parolees began to request inter-state transfers. Likewise, even before Washington

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State's three-strikes law hit the books in 1993, dozens of sex offenders called the Seattle Police Department with questions about what crimes might count as "strikes." As one career criminal told the detective in charge of the department's sex-offender unit, "It wasn't until [the three-strikes law] passed that I had to say to myself, 'Damn, these people are serious now.'"

As the next crime wave draws near, we must remain deadly serious about targeting hardened adult and juvenile criminals for arrest, prosecution, and incarceration. Anti-incarceration propagandists can be counted on to work overtime with much-publicized tales like the one about the California man whose "third strike" was stealing a slice of pizza from a child in a mall. They failed to note, however, that this criminal had four prior convictions.

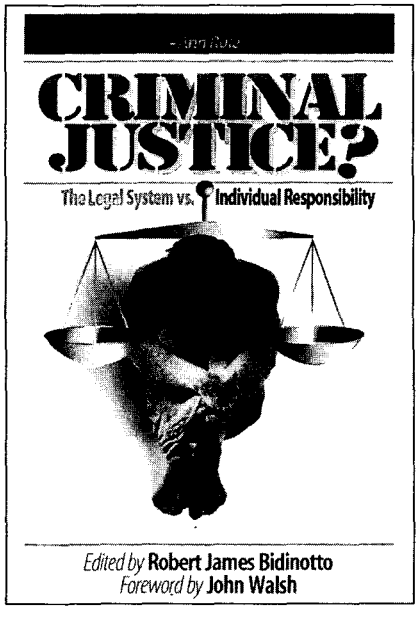
Likewise, the anti-incarcerationists are sure to repeat canards about how tougher sentencing policies will bankrupt the country and result in massive prison overcrowding. In truth, we now spend less than half a penny of every tax dollar on prisons, and the costs of prisons can be reduced greatly by cutting back on inmate amenities and services that account for more than half of the prison budget in many states.

As for "overcrowding," despite the growth in the prison population, fewer prisons today are operating over their rated capacity (the number of inmates they were designed to hold) than in 1990. And contrary to popular assertions, there is no systematic empirical evidence to show that double-celling raises the risk of prison disorders, inmate illness, or other serious problems.

Congress is taking steps to target the hardened, as it considers Title III of the Violent Criminal Incarceration Act adopted by the House last February. Known as the Stop Turning Out Prisoners or STOP law, this measure would prohibit activist federal judges from arbitrarily imposing prison caps that result each year in the early release of tens of thousands of dangerous criminals whose return to the streets results in murder and mayhem.

Targeting Resources. Whatever government does henceforth to combat crime should be done in a targeted fashion. It makes no sense, for example, to heed President Clinton's call for spending $8.8 billion in federal dollars for "100,000 cops." As I and many other analysts have proven, not only will that amount not pay for or even seed the funding of anything near 100,000 police officers, but the Justice Department's grant process is rigged to deliver lots of money to small cities that have enough cops and little crime. By the same token, however, it makes even less sense to follow the Republican alternative of dumping more than $10 billion on the states in open-ended anti-crime block grants.

So here is DiIulio's Law: Over the next five years, as our euphoria over good news about crime fades and a public panic to "do something" about youth crime begins, let us prepare to honor the overarching conservative principle that government should never spend money it does not have for purposes it has not clearly articulated in order to generate results that cannot easily be evaluated. ☎


CRIMINAL JUSTICE?
The Legal System vs. Individual Responsibility
Edited by Robert James Bidinotto
Foreword by John Walsh

Published by The Foundation for Economic Education

CRIMINAL JUSTICE?

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LEGAL DISSERVICES CORP.

There Are Better Ways to Provide Legal Aid to the Poor

KENNETH F. BOEHM AND PETER T. FLAHERTY

The Legal Services Corp. (LSC) exists ostensibly to provide legal counsel in civil matters to people who cannot afford it. Since it was set up as a quasi-independent government corporation in 1974, it has weathered accusations that it promotes an activist, ideological agenda at the expense of its poor clients, and it has survived numerous attempts at abolition or reform.

Now the House Budget Committee, under the leadership of its chairman, Congressman John Kasich of Ohio, has proposed to phase out its annual appropriation, currently at $400 million, over the next two years. American Bar Association President George Bushnell has defended the program and has called LSC critics "reptilian bastards." Numerous defenders of the LSC have taken to the floor of Congress to denounce proposals to trim funding for the agency on the grounds that without it, America's poor will be deprived of civil legal representation.

We offer a twofold answer. First, Americans should realize that the LSC is not the noble bulwark of the rights of the poor that its supporters claim. Its effectiveness at serving the poor has always been marred by its pursuit of a political agenda that wastes effort and money and at times works to the long-term detriment of the poor.

AMERICANS SHOULD REALIZE THAT THE LSC IS NOT THE SOLE DEFENDER OF THE POOR THAT ITS SUPPORTERS CLAIM.

Second, alternatives to the LSC do exist. Private legal-aid societies predated federally-funded legal services by almost 90 years, and would be thriving today had the lure of federal money not ensnared many of them. Other alternatives flourish in spite of the hostility of groups such as LSC grantees and the organized bar.

On a political level, the legal-services "movement," as it styles itself, is a 30-year success story. Since its founding as part of Lyndon Johnson's "War on Poverty," it has pursued its agenda virtually unimpeded. It has withstood budget cuts and a challenge to its existence in the Reagan years, when it waged an extensive "survival campaign." During the 1990s, it has enjoyed increasing appropriations. Its grantees receive an additional $255 million per year (as of 1993) from state and local governments, money from interest on many accounts that lawyers hold in trust for their clients (known as IOLTA funds), and private sources. Its biggest achievement, however, has been securing astronomical amounts of money for recipients of government programs. The movement, however, must face up to a crisis even greater than Republican opposition in Congress: The entire rationale for its existence is flawed:

Misunderstood needs. The LSC was created to provide help in civil cases. Most legal problems that poor people face fall into several basic categories: family law, including divorce, custody, guardianship, and child-support issues; housing, including disputes between landlords and tenants; financial issues, including bankruptcy, wills, estates, and credit problems; employment law; public benefits; prisoner rights; and immigration.

LSC supporters say that if it were not for the LSC, the 1.6 million poor people it assisted last year would be without any legal recourse whatsoever. The LSC itself proclaims its inadequacy to meet the needs of the poor by asserting that demand for its services vastly outstrips the $400 million provided by the federal government. The agency pleads for ever-increasing amounts of money on the basis of studies conducted by the American Bar Association (ABA) and in several states. These studies purport to show that only a minority of the legal needs of the poor are being met. The state studies asserted that the range was 14 to 23 percent of need.

Their methodology appears defective, however, because they fail to distinguish between "unmet" and "unrecognized" legal needs. Poor people were contacted randomly by phone, mail, or in person and asked whether they had problems in various areas, such as housing. If they responded that they had a problem with roaches, for

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instance, it was counted as an unmet legal need, even if the person had no intention of involving a lawyer in solving the problem. Under the consumer category, the most frequent problem cited was "turned down for credit." Many people are denied credit, but very few hire a lawyer. Yet, these responses were considered unmet legal needs.

Misdirected agenda. Even if we took these claims at face value, it's not hard to see why LSC resources don't go very far, because many LSC grantees have other plans for their money. Sixteen LSC grantees known as "support centers" provide virtually no direct legal services to the poor. They are organized to address specific issues such as housing, welfare, immigration, youth, and food. National in scope, the support centers often initiate litigation far from their offices. In 1993, the San Francisco-based National Center for Youth Law forced Arkansas to expand its child welfare system, and won $314,107 in legal fees for itself in the process.

The real agenda of the federal legal-services program is "law reform." It is not to serve the needs of poor individuals, but to "rescue" the poor as a class from poverty through litigated increases in transfer payments. However well-intentioned, this mission suffers from the same contradiction as the "War on Poverty" itself. The welfare state has not led men and women out of poverty but instead created dependency and a permanent underclass. As long as the LSC dedicates itself to bolstering and expanding the welfare state, it will fail to "meet the needs" even as it defines them itself.

Nevertheless, federally-funded legal services pursues its goal of law reform to effect a redistribution of income. Through class-action suits and lawsuits against local, state, and federal governments, LSC grantees have won hundreds of billions of dollars in expanded rights to welfare, Medicaid, and food-stamp benefits. In recent years, LSC grantees have sought to protect earlier gains by filing suits to obstruct or stop welfare reform in nearly every state in which it has been attempted. Yet a consensus seems to exist among political parties that the current welfare system has been eroding the family and fostering dependency for more than a generation. Expansion of benefits under the current system hardly seems like a compassionate cause on behalf of the poor.

After years of abetting dependency by winning more social welfare benefits for more classes of people, LSC grantees have turned to pursuits overtly destructive of the poor. In dozens of cities, the legal-services movement has prevented local public-housing authorities from evicting drug dealers. LSC grantees have signed up thousands of alcoholics and substance abusers for Social Security Disability Insurance benefits. They have also litigated to protect aggressive panhandling and to establish the right to camp in city parks and streets. Some legal-services litigation has undermined parental rights and family cohesion. For example, some LSC grantees have sued to force housing authorities to lease apartments to unmarried minors.

Bureaucratic structure. The LSC is wedded to providing services by the so-called "staff attorney" model, which is essentially a bureaucratic model. A legal-services office is manned by lawyers who are employed by the program. An indigent person walks in the door, describes his or her problem, and a legal-services attorney decides whether to take the case. The LSC grantee is under no obligation to render assistance, and often does not. Instead of setting priorities in response to individual needs, LSC grantees may select cases according to their potential for advancing a social agenda.

A Prime Alternative

In evaluating how the LSC is doing, it is worthwhile to look at two groups in Indianapolis that provide legal help to the poor. The Indianapolis Legal Aid Society (ILAS) was founded in 1941 and last year received all of its $458,000 budget from private sources, primarily the United Way. The Legal Services Organization of Indiana (LSOI), on the other hand, was founded in 1966 as part of the federal legal-services program. Last year it received 84 percent of its $4.5 million budget in grants from the LSC, and another 12 percent from other government sources.

One might think that the group with the larger budget does a more effective job serving the poor. Unfortunately, it does not. In 1994, ILAS handled 6,079 cases while LSOI says that it handled 12,347. (A LSOI brochure complains that it was forced to reject over 6,000 additional cases "due to budgetary restraints.") The private group handled one-half as many cases on one-tenth of the LSC grantee's budget. That works out to an expenditure of $75 per case for ILAS and $367 for LSOI.

A closer look at these figures, however, may point to an even greater disparity. The ILAS figure of 6,079 includes only those cases that were actually contested, whether they went to trial or not. It does not include consultations and referrals. On the other hand, the LSOI figure of 12,347 appears to include brief consultations and the like. It reported to the LSC that it closed only 1,273 litigated cases in 1994!

ILAS materials state that it is "non-partisan and non-ideological" and does not engage in class-action suits. On the other hand, LSOI employs a full-time lobbyist and has, for example, filed a class action suit to stop implementation of Indiana governor Evan Bayh's welfare-reform plan.

Another difference is that ILAS does not take cases on behalf of individuals seeking benefits under government welfare programs. Public-benefits cases are a significant part of the LSOI caseload, and they are sometimes zealously pursued. For instance, LSOI sued Indiana in 1993 to continue AFDC benefits to a parent even though her children had been removed from the home because she failed to exercise responsibility for their care.

Life After the LSC

The most remarkable thing about the private ILAS is that it exists at all. Private legal-aid societies like ILAS numbered in the hundreds across the country until the 1960s, when the federal government began offering direct grants to legal aid organizations (See sidebar page 19). ILAS was in the minority that resisted. Since 1974, each LSC grantee has enjoyed automatic refunding. The money flows to the same agencies, often administered by the same personnel, year after year. The system has never

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employed competitive grant procedures. Only a handful of programs have been defunded, and the LSC has not even tried to defund one since 1986. Scant evidence exists of innovation or experimentation with different approaches to meeting the legal needs of the poor. Luckily, others within the legal profession are meeting the challenge.

Expanded "judicare." A preferable alternative to the LSC's staff attorney model is "judicare," offering legal services based on the so-called British System. Under judicare, an indigent client employs the private attorney of his or her choice, who is reimbursed by the government in accordance with a set schedule of fees. The LSC has funded only a few judicare programs, presumably because they offer little opportunity to practice so-called law reform.

In 1983, long-time judicare advocate Samuel Jan Brakel made his case this way: "What point or purpose is there in having a separate legal-aid establishment for the poor, staffed overwhelmingly by young and inexperienced lawyers, armed with a socio-political agenda and a whole folklore about what poor clients want, need, or what is good for them? Why patronize low-income people in this way? Why deprive them of the diversity of views, practices, and talents that abound in the private sector? Why deny them the right to choose their own lawyers? In no other area of social or human service that I am aware of have we made such a concerted, almost perverse, effort to avoid using the resources already existent and available."

In South Carolina, the LSC funds a judicare program called Legal Services of the Fourth Judicial District. This is

The Destruction of Legal-Aid Societies

The Legal Aid Society of New York was the nation's first, opening its doors with one part-time attorney in 1876. Private societies numbered more than 200 by the mid-1960s and, except in a few municipalities, received no government support. Overall, about 60 percent of their financial support came from community chests, 15 percent from bar associations, and the rest from individuals and businesses.

An 89-year-old tradition of private legal aid ended in 1965 when the federal government began making direct grants to legal-aid organizations through the Office of Economic Opportunity (OEO), a cornerstone of Lyndon Baines Johnson's "War on Poverty." The previously private societies constituted 60 percent of the grantees of the new federal program.

With federal funding came dramatic change. Sargent Shriver's OEO spearheaded a shift in emphasis to "law reform," the expansion of poverty benefits through litigation. The directors and staffs of many programs resented Washington setting local priorities, but were quickly overwhelmed. The law gave the OEO powers to award grants to antipoverty agencies on any basis.

The introduction of federal funds provided huge power to the small but highly ideological OEO staff to set priorities and demand changes in local organizations. Few local aid societies and bar organizations could resist the allure of new federal funds. The annual budgets of the private legal-aid societies totaled about $4 million in 1964. The federal program initially promised an annual expenditure 10 times that amount to groups administered or heavily influenced by local bar groups. In cases where the existing legal-aid operation refused to remake itself to the OEO's liking, a competing organization was founded and funded instead. By 1967, the OEO was distributing $42 million to 300 organizations. The OEO's crash campaign resulted in a network of law offices and attorneys equal in size to the U.S. Department of Justice and all its U.S. Attorney offices.

The OEO placed its own personnel in programs it funded through something called the Reginald Heber Smith Fellowship Program. Beginning in 1967, young attorneys were recruited and trained in the principles and tactics of "poverty law." Sent out to local grantees, the "Reggies" remained employees of the Smith program.

By 1971, 25 percent of all LSC lawyers were graduates of the program. Fred Speaker, an OEO official at the time, expressed the OEO attitude to the formerly private groups: "We are a program that six years ago rose out of the sloth of token, tired, 19th-century legal-aid societies." Private institutions were not just crowded out by public ones, but were actively undermined and infiltrated in a campaign akin to a corporate takeover.

"Law reform" proceeded at a furious pace. By 1972, some 219 cases had been brought all the way to the U.S. Supreme Court by LSC attorneys. Under the former private system, not one case had ever gone that far. Through the end of 1972, some $290 million in federal funds had been spent on legal services, but the cost to the taxpayer was actually more than $2 billion.

In 1973, President Nixon proposed to dismantle the OEO, and appointed as its director Howard Phillips, who promptly canceled "law reform" as a goal. Congressional supporters of legal services moved to "insulate" the program from "political pressure" and sought to establish an independent Legal Service Corp. (LSC), along the lines of the Corporation for Public Broadcasting. Richard Nixon signed the Legal Services Corp. Act on July 24, 1974—the last legislation he signed before resigning... During congressional hearings this year, LSC officials pointed out that Nixon created the LSC, but they did not mention that liberal senators were holding up funds for his Watergate defense at the time.

The new LSC has dispensed funds in much the same way as the OEO did. According to Indiana University Law Professor William F. Harvey, a director of the Indianapolis Legal Aid Society and chairman of the LSC during the 1980s, "The effort to undermine the private legal-aid societies continued under the LSC, particularly during the chairmanship of Hillary Rodham Clinton [1978-80]. The Washington-based LSC ideologues cannibalized the standards, criteria, the concepts, even the esprit de corps of America's legal-aid societies."

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an excellent model for private legal aid to the poor. Covering six counties, the program contracts with fifty-two private attorneys who receive referrals from a staff member in each county. According to the South Carolina Bar Foundation, last year the other five LSC programs in the state budgeted between 42 percent and 50 percent of their resources to direct client services, whereas the Fourth Judicial District group budgeted 68 percent.

Executive Director Robert Adams claims that he offers better service, too. "By offering the services of 52 panel attorneys, we feel the clients have access to a diversity of legal expertise instead of limiting them to a few staff attorneys." Adams also points out that new attorneys starting

AN EXPANSION OF PRO BONO IS ALREADY UNDERWAY, AND THE LEGAL PROFESSION IS AGGRESSIVELY PROMOTING IT.

practices in small communities have benefited and have seen clients return as paying clients. Adams also notes that "our program has never been involved in class action suits, abortions, or fee generating cases."

***Pro bono* legal work.** While overstating legal needs of the poor, LSC proponents understate services that are already available, particularly in the amount level of *pro bono* legal work. *Pro bono* is a shortening of *pro bono publico* which means "for public good." It refers to legal help rendered to a client by a private attorney for no fee or a reduced fee.

The LSC underplays the amount of free legal work that is done in order to aggrandize the agency's importance. In May 1995, LSC chairman Douglas Eakeley and LSC president Alex Forger testified in Congress that 130,000 attorneys do *pro bono* work. But this figure is the number of attorneys who are formally enrolled in organized *pro bono* programs affiliated with LSC grantees.

The actual number doing *pro bono* work, including work on an ad hoc basis, is much higher. Although no national study exists, studies in individual states provide some useful data. A 1991 study by the State Bar of California reported that 64 percent of its members engaged in some form of voluntary, uncompensated legal work. A 1994 New York State Bar Association report put the figure at 49 percent. The American Bar Foundation places the total number of attorneys in the United States in 1995 at 896,000. If one adopts a rather conservative assumption that at least 40 percent engage in *pro bono* work, the number is 358,400, between two and three times the number cited by Eakeley and Forger.

Eakeley and Forger went on to testify that "*pro bono* services from private attorneys are at an all-time high primarily because of the efforts of the organized bar, the LSC, and local programs to involve private attorneys in the delivery of legal services." They were correct in pointing out that *pro bono* is at an all time high, but wrong to award the LSC a central role. During the 1980s, the ABA put a new stress on attorneys' *pro bono* obligation. A 1988 ABA resolution asked all attorneys to devote at least 50 hours per a year. An ABA directory of *pro bono* programs published in 1984 had 300 entries. The 1993-94 edition contained over 900 programs and indicates that no more than 375 of the programs are substantially supported by LSC grantees. (Some grantees are involved with more than one program.) Thus, the majority of *pro bono* programs would exist without the LSC and they are today more numerous than all the programs existing in 1984.

The LSC's involvement with *pro bono* largely stems from a somewhat modest attempt in the 1980s by the Reagan-appointed LSC board to provide competition to the staff-attorney system. Grantees were required to establish a "private-attorney involvement program," on which they must spend 12.5 percent of their annual federal grant. The attitude of the legal-services "movement" toward *pro bono* has often been hostile. Some LSC *pro bono* programs are notoriously inefficient. For instance, Legal Services Organization of Indiana managed to spend $408,867 in 1994 on a program that supposedly relied on voluntary help. It closed just 668 cases at an average cost of $612 per case.

Legal-services groups can only assist clients whose annual income is within 125 percent of the poverty level. Often, individuals cannot afford a lawyer, but have incomes which exceed this level. For example, Bay Area Legal Services, the LSC grantee in Tampa, Florida, was turning away a hundred legitimate cases a week because the clients earned too much. In response, 35-year-old real-estate attorney Mike Bedke sought to address the problem by launching the Courthouse Assistance Project. Except for office space provided by the Clerk of the Hillsborough County Court, the program receives no government support. It is staffed by volunteer attorneys who help 300 individuals per month right in the Courthouse on a first-come, first-served basis. Attorneys answer questions, help people fill out forms, and tell them what to expect in court. According to Bedke, "A lot of times we don't even have to help them file a lawsuit. It's a matter of resolving a dispute over the phone, writing a letter for them, or directing them to a particular agency."

Bedke, a board member of Bay Area Legal Services, says that Bay Area directors worried that the new program would compete for resources, but that he has found a "new class" of volunteers to staff the project. Bedke explains that many attorneys felt that Bay Area represented "welfare queens" and that they are much more willing to help clients who have jobs and are trying to get ahead. Through his position as chairman of the ABA's Young Lawyers Division, Bedke has been seeking to spread the program to other cities; so far 14 have emulated the Tampa project. Another two dozen have expressed interest.

Bedke says part of his inspiration came from a six-year-old Richmond, Virginia, project aimed specifically at the working poor. Hunton & Williams, the largest law firm in

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southeastern United States, opened an office in a basement in a distressed Richmond neighborhood.

Last year, the office handled about 600 client representations for a flat $50 fee, plus out-of-pocket expenses. For every reduced-fee client representation, the office handled two to three more consultations free of charge, usually resulting in some resolution short of legal action or a referral to another agency. Clients may earn up to twice the LSC eligibility level, although eligibility is not strenuously investigated, freeing time for the staff to work on actual cases. According to George H. Hettrick, a partner in the firm, "We believe the $50 fee is a good thing for the client. That person feels like a real client and not the recipient of charity. When people are given dignity, it fosters a more successful lawyer-client relationship."

The Hunton & Williams office in Church Hill receives no government support whatsoever. It is staffed by 60 of the firm's lawyers, who put in an average of 40 to 60 hours per year. The office handles housing, family, and guardianship cases, three types of cases shunned by private attorneys. In the housing category, the office not only handles landlord/tenant disputes, but also closings for first time home buyers, and the closings for the new owners of homes built or rehabilitated by Habitat for Humanity and other housing programs.

Alternative dispute resolution. More and more poor people are avoiding legal services altogether by turning to Alternative Dispute Resolution (ADR). Informal ADR procedures like conciliation, arbitration, and mediation have enjoyed explosive growth in recent years.

The programs run the gamut from taxpayer-supported programs affiliated with state court systems to private, neighborhood programs. In New York, all 62 counties now have a Community Dispute Resolution Center. Each center is a private, nonprofit agency with a contract with the state court system. The program was established in 1981 with the support of both liberals and conservatives in the state legislature. By 1988, every county had one. Each currently receives up to 50 percent of its budget from the state. The balance is raised from local governments and

Why the LSC Cannot Be Reformed

Responding to criticism of the Legal Services Corp. (LSC), the agency's defenders in Washington favor reform over elimination. But the LSC is not reformable. The Legal Services Corp. Act of 1974, which created the corporation, allows it to take public funds—$400 million this year—and transforms them into private funds, immune from the checks that apply to other types of federal spending.

The law also established a unique, hybrid structure for the corporation that guarantees it can never be accountable. The LSC is an independent, private, nonprofit corporation that makes grants to 323 separately incorporated private nonprofit grantees. The LSC's 11-member board is appointed by the president, subject to Senate confirmation, but the board has little actual influence over the grantees and how they spend their grants. Nor does the executive branch have much influence over the LSC budget. By law, it goes straight from the LSC to Congress, and the Office of Management and Budget may only review it.

The LSC's status as a private corporation exempts it from many federal criminal laws pertaining to government officials, such as the Anti-Deficiency Act. Although it is a felony for a federal official to misappropriate federal funds, the LSC Act frustrates operation of that law by declaring that "officers and employees of the Corporation shall not be considered officers and employees" of the federal government.

From time to time, Congress and the LSC board have sought in vain to exercise oversight. Restrictions on LSC involvement in abortion, Congressional redistricting, politics, lobbying, and advocacy have been ignored or circumvented, primarily through the nonfederal funds "dodge." Since most grantees receive some funding from IOLTA and state and local governments, they are able to claim that any restricted activities are not done with their LSC funds.

There is no way to verify this because legal-services attorneys do not keep time sheets, thereby eliminating the only means of federal oversight. Furthermore, legal-services lawyers do not report the cases on which they work to anyone beyond their offices, and all case records are off limits. This secrecy, shielded by an invocation of the attorney-client privilege, prevents Congress from evaluating the effectiveness of any legal-services program. There are no provisions for the privilege to be waived for purposes of oversight, even though the overseers have paid for the services.

As a result of these factors, we have little information on expenditures by case or by category or service. While most government programs are required to have detailed accounting systems to explain how taxpayer money is used, the LSC has continued to ask for funding increases without offering any detailed evidence that previous funding has been used well.

The LSC can track the use of its grants through a monitoring program that includes on-site visits by Washington-based staff. During the Bush administration, about 125 visits took place annually, meaning the average program could expect a visit once every three years. Under the Clinton-appointed board, only six monitoring visits took place last year.

The LSC structure is ripe for abuse, and abuses will be rampant as long as it exists. It makes little difference who is in the White House, the Congress, or on the LSC board. As long as funds flow through the 323 LSC grantees, public funds will continue to be spent by private citizens pursuing a private political agenda. As Alan Houseman, a legal theorist who helped draft the 1974 Act, wrote in 1984, "Since the central directions of the program were not created by statutes or regulations, they are invariably difficult to undo by regulations and LSC policies."

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private sources, like the United Way. New York will provide a total of $3.1 million for fiscal year 1995.

Administered by a staff of four in Albany, the program depends on 2,254 trained volunteer mediators from all walks of life, including housewives and retirees. Most are nonlawyers. By any measure, the statistics quoted by the program's statewide office are impressive. In fiscal year 1994, the centers conducted 25,015 conciliations, mediations, and arbitrations involving 63,210 people. The first step is conciliation, where an attempt is made to work out the problem by phone or mail. If that doesn't work, the parties actually meet face-to-face with a mediator present. In 79 percent of the matters that reached the mediation stage, a voluntary agreement was reached. If there is still no resolution, the parties go to arbitration.

In fiscal year 1994, it took 16 days from the intake to final disposition for the average single-hearing case and 41 days for the average multi-hearing case. There were 13,609 cases involving a single hearing and just 623 requiring more than one. The average time per mediation or arbitration was one hour and 11 minutes. The average cost to the state for each case screened as appropriate for dispute resolution was $68. The average state cost per conciliation, mediation, and arbitration was $121. The centers reported $2,919,276 awarded in fiscal year 1994 in restitution and through mutual agreements. The average award per case was $788.

The centers are open to anyone. State courts make both voluntary and mandatory referrals, accounting for about half of the caseload. Clients may seek advice from lawyers, but very few disputants use them. A review of the disputes handled shows that they include those common to the poor. Thirty-four percent involved allegations of harassment, 24 percent alleged breach of contract, 7 percent housing, 7 percent interpersonal disputes, 7 percent assault, 4 percent personal or real property, and 4 percent custody, support, or visitation.

Interestingly, many dispute-resolution programs handle minor criminal cases. Thus, the approach to dispute resolution is comprehensive. Its goal is to prevent the escalation of problems, especially among people who know each other. A mutually acceptable resolution of a simple trespass case can prevent an assault later on. Sixteen percent of the disputes were between neighbors, 15 percent between acquaintances, 13 percent between tenants and landlords, 9 percent between consumers and merchants, 6 percent between family members, 4 percent between former boyfriends and girlfriends, and 4 percent between strangers.

According to the National Institute for Dispute Resolution, 27 states have formally incorporated various ADR methods into their court systems, up from just 10 in 1980. The National Center for State Courts reports that at least 1,200 programs around the nation are receiving referrals from state courts.

One doesn't have to live in New York to take advantage of ADR. "Neighborhood justice centers" now exist in many urban areas around the country. Some receive support from local governments and some are privately funded. Some receive referrals from local courts and some do not. What they have in common is a minimum of bureaucracy and a reliance on volunteers to serve as third-party referees. The federal role in the development of these institutions is instructive. In 1978, the Justice Department dispensed 18-month seed grants to three neighborhood justice programs in Kansas City, Atlanta, and Los Angeles. Smaller grants were also provided for another year of operation. But in contrast to the automatic refunding enjoyed by LSC grantees, the programs were on their own in the third year. The programs survived and centers in other cities blossomed with no federal seed money at all. Today, there are several hundred community and neighborhood justice centers. The National Association for Community Mediation has 150 programs in 37 states.

TO INCREASE ITS OWN IMPORTANCE, THE LSC UNDERPLAYS THE AMOUNT OF FREE LEGAL WORK DONE BY U.S. LAWYERS.

Services by nonlawyers. Along with ADR, nonlawyer practice (NLP) is growing rapidly. Independent paralegals and other specialists are performing tasks previously reserved for licensed attorneys. Nonlawyer practitioners handle such matters as uncontested divorces, wills, estates, bankruptcies, real estate closings, child custody and support, and immigration problems. They appear before 38 federal agencies. Many LSC-eligible clients take advantage of these services. Help Abolish Legal Tyranny (HALT), a Washington-based legal reform advocacy group, estimates that 5,000 independent paralegals (paralegals not employed by an attorney) are currently working in private practice.

There would be more if not for the bitter opposition of state bar associations. These powerful groups lobby for "unauthorized practice of law" (UPL) statutes, which are on the books in every state except Arizona. The vast majority of UPL complaints are not filed by dissatisfied consumers, but by members of the bar. Not only has for-profit NLP been targeted for formal complaints, but also individuals and non-profit organizations that have been helping the poor. The most celebrated case is that of Rosemary Furman, a legal secretary who escaped going to jail in the mid-1980s. Her crime was to charge a small fee for helping battered women fill out civil protection orders and divorce forms. HALT says that it gets an average of two calls per week from nonlawyers being investigated or charged under UPL.

The LSC has fought competition from nonlawyers. In Jacksonville, Florida, nonlawyer Susan Longley operated American Legal Clinic, Inc., now known as American Documents Clinic, Inc. Among other things, Longley assisted people in the preparation of Chapter 13 bankruptcy filings. She handled a filing for Sandra Samuels for

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$215, saving her home from foreclosure. Jacksonville Area Legal Aid, Inc., an LSC grantee, soon after launched a successful UPL action against Longley, and in December 1994 was awarded $5,316.20 in legal fees even though the judge found that the client had not been harmed in any way.

In response to the NLP phenomena, the ABA formed a Commission on Nonlawyer Practice scheduled to make a report in 1996, but most state bar association officials remain deadset against any increased role for NLP. Most argue that clients are put at risk by nonlawyers handling legal problems. But former New Jersey Bar President Thomas Curtin was quoted in the July 3, 1995, *Lawyers Weekly*, "I have no difficulty saying my position is protecting the interests of lawyers. Why is the ABA, an organization that is supposed to working for lawyers, trying to find work for nonlawyers? That is not the business of the ABA. This is the American Bar Association, not the American Paralegal Association."

Do-it-yourself. In her unsuccessful fight to offer legal services, Longley was also enjoined from using any computer program or legal form designed for use by attorneys. It is easy to see why lawyers are concerned about these tools. Self-help legal publications and computer programs are enjoying expanded sales. Ralph Warner, the editor of NOLO Press of Berkeley, California, estimates that how-to legal publications are now a $50 million business. One of NOLO's most popular titles is "How to File for Bankruptcy." Another is "Plan Your Estate." Its most popular software package, allowing individuals to create their own wills, sold 60,000 last year.

What to Do?

The best thing the government can do for the poor is to do away with the LSC. The agency won't go willingly, so Congress should abolish it. Additionally, care should be exercised in replacing it with something else. The potential of unintended consequences is a central lesson of the last 30 years. A number of ideas have been proposed, but should be discarded:

- "Reform" of the Legal Services Corp. No new regulations or restrictions can reform a program founded on a flawed premise (see sidebar page 21).
- A federal judicare program. The last thing the country needs is Medicare for lawyers. State and locally-funded judicare programs are worthy of support, particularly in rural areas.
- Block grants to the states. Preferable to the present LSC-grant system, they may be useful during a phase out of federal funding. Block grants pose the danger, however, of preserving a federal role in legal services.
- Mandatory *pro bono*. *Pro bono* should not result from coercion. It is a violation of attorneys' free association rights and undercuts the voluntary spirit necessary for successful *pro bono* work.

How then should the legal needs of the poor be met? First, it should be recognized that there are certain needs the poor don't have. Without deep pockets, they seldom get sued. When injured or harmed due to the negligence of others, there is no need for a taxpayer-provided lawyer. All a victim has to do is to call the number on the television screen. Plenty of private lawyers await with open arms to take contingency cases.

Second, it should also be recognized that many of the present legal problems of the poor do not require lawyers. Deregulation of the legal profession will provide disproportionate relief to the poor. ADR and NLP are well suited for many of the kinds of problems the poor encounter.

Third, legal needs which actually require a lawyer should not be established on the basis of self-serving and nonsensical studies sponsored by federal grant recipients. It may be impossible to quantify legal needs in the first place. In our lawyer-rich society, legal problems are whatever clever lawyers decide to bring forth. Actual needs can only be established by poor people themselves exercising free choice. A federal income-tax deduction for pro bono work would help make the system client-based, rather than attorney-based. Such an incentive was proposed by GOP Congressman Henry Hyde of Illinois in the early 1980s with a monetary cap on the total deduction.

The good news is that an expansion of *pro bono* work is already underway and the legal profession has been aggressively promoting it, notwithstanding ABA support for the LSC. Ending the federal legal-services program would further oblige attorneys to assist the poor. The existence of a federal program has undoubtedly provided some attorneys with the rationale to shirk responsibilities in their own communities. A federal income tax deduction is not a panacea, however. The success of *pro bono* should not be dependent on the availability of a tax deduction, but on a renewal of the voluntary spirit of members of the bar.

Many attorneys will be more likely to engage in *pro bono* in a structured program, and there are many areas where a storefront, walk-in office would a tremendous convenience for the poor and working poor. As is being demonstrated in Indianapolis, a private institution can serve the poor better than a public one. We should work to restore the ethos of the private legal-aid society that not dependent on government funds.

Indeed, the private legal-aid society can serve as a useful model for LSC grantees if they should lose federal funding. The transition to a nonfederal system will not be tumultuous. As noted, LSC grantees already receive $255 million from non-LSC sources. Unlike other federal programs, LSC grantees may carry over surpluses each year, and some programs have significant reserves socked away. A simple policy decision to stop doing class-action suits, public-benefits cases, advocacy, and lobbying would allow most grantees to help more poor individuals, even on a reduced budget. If programs are truly providing a valuable service, they should be able to raise money locally.

Ultimately, legal services for the poor cannot be separated from legal services for everyone. Problems of affordability and accessibility are not limited to the poor or working poor. Our society threatens to become "overrun by hordes of lawyers, hungry as locusts," as Warren Burger, the late chief justice of the Supreme Court, put it. Reducing litigation and lowering its cost through tort reform and other measures would benefit everyone. Getting lawyers out of lives of Americans, including the poor, is the real point.

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ORIGINAL THOMAS, CONVENTIONAL SOUTER

What Kind of Justices Should the Next President Pick?

JOHN O. MCGINNIS

The 1994 term of the Supreme Court cast into stark relief the performances of Justices Clarence Thomas and David Souter. Justice Thomas emerged as the boldest member of the Court in half a century—a jurist committed to seeking the original meaning of the Constitution in lengthy and learned opinions that survey the vast scope of American constitutional history. On the other hand, Justice Souter, while continuing his move to the Court's liberal wing, tended to write jejune opinions seemingly intent on avoiding the central issues of the case. It is as if Thomas and Souter keep alive in the public sphere the paradoxical qualities of the president who appointed them both. Thomas represents the bold and fearless George Bush who prosecuted the Gulf War and stood by Thomas in his contentious confirmation hearings, while Souter represents the reticent George Bush who was inattentive to conservative principles in many areas of domestic policy.

Given the excellent prospects in 1996 for a new president inclined to appoint conservative justices, it is appropriate to analyze the differences between these justices to aid the new president in choosing nominees in the mold of Thomas rather than Souter. I then propose a few criteria for choosing the next nominee that will maximize the chances of selecting an outstanding justice who will help ensure principled constitutional governance into the next century.

JUSTICE THOMAS EMERGED LAST TERM AS THE BOLDEST MEMBER OF THE COURT IN HALF A CENTURY.

Liberal and conservative commentators alike agree on one proposition about the most recent Supreme Court term: Thomas became a force to be reckoned with. Tony Mauro, a liberal Court watcher, wrote of Thomas's "bold and searching" opinions. Burt Neuborne, a professor at New York University Law School and the former director of the ACLU, was struck by Justice Thomas's "vigorous tone" in his many "interesting and important opinions." James Kilpatrick wrote of his "masterly" work. George Will gave what may be a conservative's highest accolade for a judge: Thomas's opinions, he wrote, were "Borkean."

Indeed, the most striking characteristic of Thomas's opinions was one he shares with Judge Robert Bork—a willingness to go back to first principles to uncover the meaning of the Constitution. In case after case where the original meaning of the Constitution was put in issue by the litigants or other justices, such as those involving term limits, the extent of Congress's authority under the Commerce Clause, and the protection afforded anonymous pamphlets under the First Amendment, Thomas wrote magisterial opinions that investigated the original understanding of the Constitution in detail. To be sure, not all of his opinions investigated all possible originalist angles of a case. But this is only to be expected, given the way issues are framed on the Court. Thomas is not a law professor, completely at liberty to approach every case without reference to the framework in which his colleagues or the litigants are operating. Nevertheless, his opinions undoubtedly represent the most impressive set of originalist opinions ever written by a Supreme Court justice within a single term.

Thomas's opinion in *U.S. Term Limits v. Thornton* was emblematic of his approach. The issue in the case was whether the states could preclude individuals who had served a certain number of terms as a senator or member of the House of Representatives from again appearing on the ballot for that office. The Constitution sets out certain qualifications for both representatives and senators. For instance, as to members of the House of Representatives, the Constitution provides, "No Person shall be a Representative who shall not have attained to the Age of twenty five Years and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen."

The analysis in the majority opinion in *Thornton* rested

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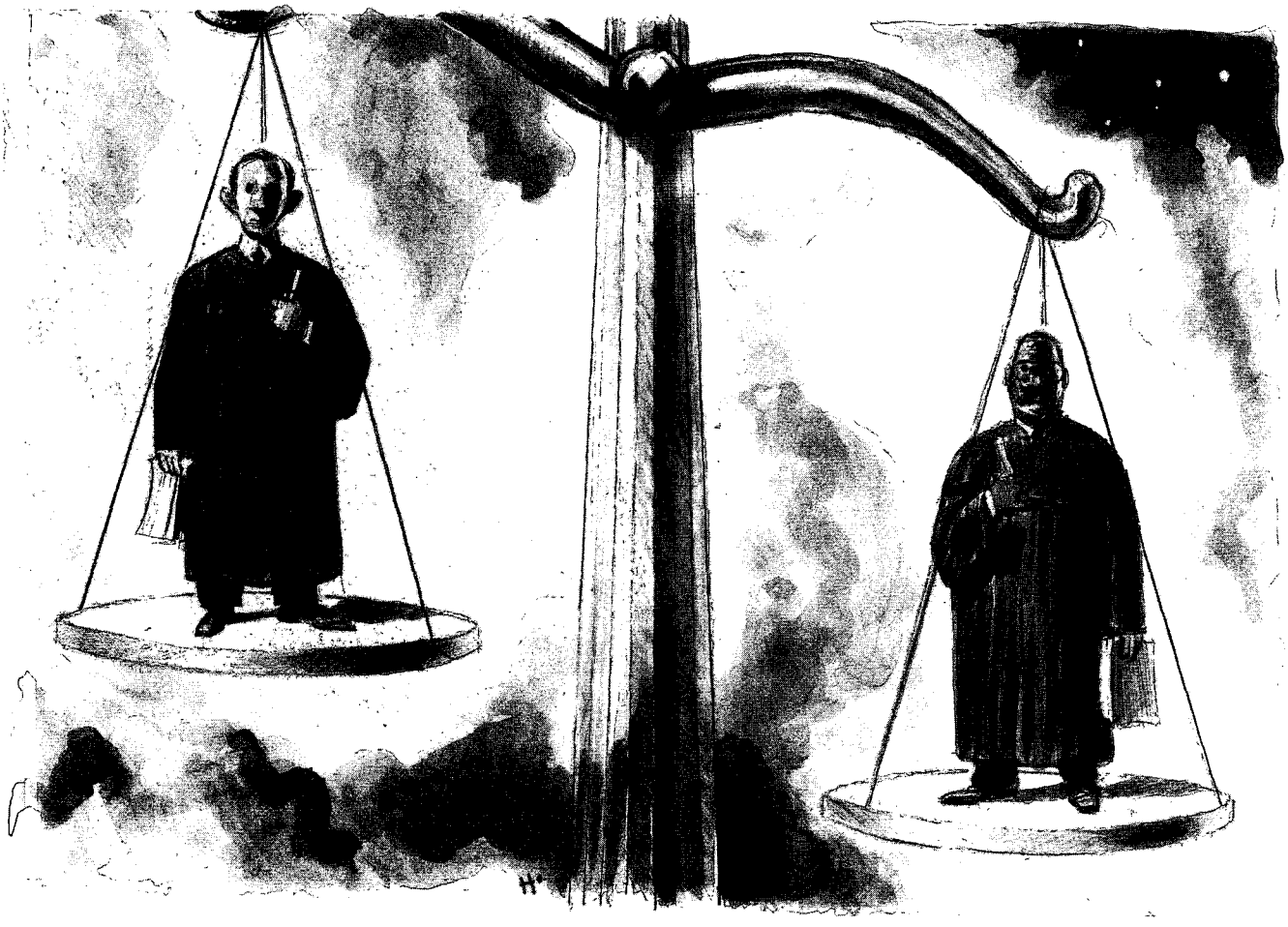

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on the proposition that these qualifications were exclusive. It held that term limits were unconstitutional because state law could not add qualifications relating to the number of terms a candidate had previously served. The majority asserted that its view was supported by the precedent of *Powell v. McCormick* (1969), where the Court held that Congress could not exclude Adam Clayton Powell on the basis of criteria not mentioned in the qualifications clause. The majority also argued that the structure of the Constitution as a whole reflected the sovereignty of a national people, and additional qualifications would detract from national sovereignty.

Justice Thomas shredded these arguments. First, he showed as a matter of first principle that the Constitution was adopted by the people of each state and not by the people of the nation as a whole. Thus, the people of the states are prohibited from acting only if they impose such a prohibition on themselves in the Constitution or ceded such power exclusively to the federal government. This principle of residual state sovereignty is encapsulated in the Tenth Amendment: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the States respectively, or to the people."

Thomas showed that the Tenth Amendment was expressly designed to rebut inferences like the one the majority attempted to draw from the qualifications clause. Because the Constitution simply provides a set of minimal qualifications for representatives and senators and nowhere prohibits the states from adding additional qualifications, the Tenth Amendment shows that the states are free to make additions. As Thomas wrote, "All powers that the Constitution neither delegates to the Federal Government nor prohibits to the States are controlled by the people of each state."

Once it is established that the federal government is a government of enumerated powers while the state governments are governments of residual powers, the term-limits case is easily decided. In particular, it is clear that the precedent in *Powell v. McCormick* is no bar to state term limits. Congress simply lacks an enumerated power to impose additional qualifications, whereas the states reserve the power to add additional qualifications because nowhere in the Constitution did they surrender that power.

The opinion in *Thornton* was not Thomas's only originalist *tour de force* of the term. In *United States v. Lopez*, he wrote a concurrence that was the most interesting judicial explication of the Commerce Clause in more than half a century. In *Lopez*, the Court invalidated (as beyond Congress's power under the Commerce Clause) a federal statute that prohibited the possession of a gun within 500 feet of a school. Justice William Rehnquist's majority opinion essentially reasoned that education was not commerce and therefore held inapplicable the long line of cases in which the Court has interpreted the Commerce Clause to

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permit Congress to regulate any activity which has "substantial effects" on interstate commerce.

Thomas's opinion was more sweeping. He called for a reconsideration of the "substantial effects on interstate commerce" test because it was inconsistent with the original meaning of the Commerce Clause. First, Thomas showed that the modern test used a meaning of "commerce" that encompassed all economic activity, whereas the meaning of "commerce" at the time of the Framing was limited to trading and exchange, as distinct from other productive activities such as manufacturing and farming. Second, Thomas observed that permitting Congress to regulate all activities "affecting" interstate commerce deprives many of the words contained in the clause of independent force. Moreover, most of the rest of the authorities granted to Congress under Article I would also be superfluous under the "affecting commerce" test. Why give Congress particular authority to regulate bankruptcy, since insolvency self-evidently affects economic activity among the states?

THE MARK OF SOUTER'S WORK LAST TERM WAS HIS ATTEMPT TO USE PROCESS TO FLEE SUBSTANCE.

Thomas did not settle on a precise test for Congress's authority over interstate commerce, explicitly recognizing the difficulty of recovering the original meaning of the Commerce Clause in light of decades of nonoriginalist precedent. Describing the exact contours of an improved jurisprudence concerning the Commerce Clause was appropriately left to a future opinion, where that test could command a majority of the Court.

Some commentators have labeled as radical Thomas's opinions in *Lopez* and other cases this term. But these opinions are radical only in the sense of going back to the original roots of the Constitution. They are, in fact, an attempt to begin to erase the decades of radicalism during the Roosevelt and Warren Courts, which transformed the Constitution into a hollow likeness of its former self. The Constitution fashioned by those courts reflected the enthusiasm of the New Deal and the Great Society for a powerful, centralized government to act as the engine of social democracy and collectivist reforms. Accordingly, the pillars of the original Constitution, such as federalism, the separation of powers, and property rights, that seemed to be roadblocks to social democracy were weakened and, in some cases, eviscerated. Now that centralized and collectivist solutions to social problems are increasingly seen as a snare and a delusion, it is not surprising that the Constitution of the Framers—designed to sustain only the limited, centralized government necessary to maximize the protection of individual rights—is beginning to reappear. Thomas has become one of the leading restorers of the original canvas, stripping away in opinion after opinion the obscuring varnish that has accumulated over the last 50 years.

Thomas also wrote a profoundly originalist concurrence in *McIntyre v. Ohio Elections Commission.* At issue was whether Ohio could restrict anonymous election pamphlets. The majority, in an opinion by Justice John Paul Stevens (over a dissent by Justice Antonin Scalia), invalidated such restrictions because of the value of anonymous pamphleteering to political discourse and because of the long tradition of such pamphleteering. Refusing to join the majority opinion, Thomas wrote a concurrence in which he analyzed whether the freedom of speech as understood at the time of the Framing protected the right of anonymous political speech. Reviewing an enormous amount of political discourse, he demonstrated that the Framers themselves relied on anonymity to "a remarkable extent" in their advocacy of the Constitution with only one or two pieces signed in their original name. Moreover, he unearthed an important controversy about anonymous political speech between the Federalists and the Anti-Federalists in Philadelphia in 1787. There the Federalists backed down from an attempt to prohibit anonymous speech in the face of claims that such a prohibition "*reversed* the important doctrine of freedom of the press." Given the pervasiveness of anonymous political speech and its triumph over legal restrictions in the years immediately preceding the adoption of the First Amendment, Thomas concluded that anonymous pamphleteering was protected by the concept of freedom of speech.

Nor was *McIntyre* the only case in which Justice Thomas deployed originalism to protect civil liberties. In *Wilson v. Arkansas,* Justice Thomas held for a unanimous Court that the Fourth Amendment reflected the "knock and announce principle" at common law at the time of the Framing. The Fourth Amendment therefore permitted unannounced searches only in circumstances where that venerable principle permitted them—instances when there were strong countervailing exigencies or considerations.

McIntyre and *Wilson* discredit the familiar claim of liberal commentators that Thomas is hostile to civil liberties. He is fearless in sustaining the liberties that the Constitution protects. Indeed, we can look forward to his sharp analysis as the Court revisits liberties such as those contained in the Contract Clause that were conveniently discarded by the "civil libertarians" of the post-New Deal era.

Thomas was also a strong voice on matters of civil

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rights. His opinions in that area were less elaborate than his originalist analyses of the Constitution, but no less forceful. In the most important civil-rights case this term, *Adarand v. Pena*, in which the Court declared that strict scrutiny must apply to racial preferences in federal contracting programs, Thomas inveighed against the dissent's attempt to create "a paternalism exception to the equal protection clause." He also showed an exact understanding of law's essential possibilities and limitations: "Government cannot make us equal; it can only recognize, respect, and protect us as equal before the law."

In *Missouri v. Jenkins*, Thomas also filed an important concurrence supporting the Court's holding. The decision prevented a lower court from continuing to run Missouri's schools decades after segregation had ended partly on the justification that schools still were not racially mixed. "It never ceases to amaze me," wrote Justice Thomas, "that courts are so willing to assume that anything predominantly black is inferior." Consistent with the theme of his *Adarand* concurrence, Thomas observed there is nothing constitutionally wrong with a predominantly black institution, unless it is the law that forces an institution to be composed of a particular race.

Although his voting record was among the most liberal of any justice, even liberal commentators did not single out Souter's opinions for praise. Indeed, the mark of Souter's work last term was his attempt to use process to flee substance. "The Court's process of orderly adjudication has broken down in this case," began his *Missouri v. Jenkins* dissent, and his opinion soon degenerated into a set of querulous complaints about the procedural posture of the case—complaints easily refuted by the majority. In *Adarand*, his opinion rested largely on the proposition that the Court must uphold the program of racial set-asides because of the *stare decisis* effect of *Fullilove v. Klutznick* (1980) in which a fragmented Court upheld a different set of racial set-asides more than a decade ago, and *Metro Broadcasting, Inc. v. FCC* (1990), in which the Court upheld racial preferences in the peculiar setting of broadcasting.

Adarand illustrated the failings of Souter's performance: Far from being a critical thinker, he is a prisoner of the school of legal process jurisprudence that reigned at Harvard Law School during his time as a student there. Legal process jurisprudence arose in response to legal realism, which claimed that judges made decisions on political or other personal grounds. One important strand of process jurisprudence maintained that judges could avoid unprincipled decisionmaking by focusing on the distinctive aspects of legal procedure such as *stare decisis*. This school no longer holds sway even among academics, in part because it is widely recognized that procedural doctrines are as subject to manipulation at least as much as the substantive doctrines of law.

In any event, Souter's performance in *Adarand* is an unquestioning pupil's parody of his master's teachings. There was no majority opinion in *Fullilove*, thus whatever the importance of honoring *stare decisis* and preserving long settled principles, it was preposterous to put *Fullilove* in this category. Moreover, *Metro Broadcasting*'s lenient standard of review for preferences in broadcasting conflicted with much of the rest of the Court's equal-protection jurisprudence. Accordingly, the issue of racial preferences in federal contracting could not fairly be understood as governed by binding precedent. It will certainly be interesting to watch whether Souter in the future gives *stare decisis* effect to the majority opinions from which he is now dissenting.

Rosenberger v. Rector & Visitors of the University of Virginia is the case that perhaps best shows the chasm between Souter and Thomas. In that case, the majority opinion, which Justice Kennedy wrote and Thomas joined, held that the University of Virginia could not refuse to fund the printing costs of a student newspaper because of its Christian editorial content so long as it was funding the printing costs of other student publications.

The Court held that the university had discriminated against religiously inspired newspapers relative to those with a secular editorial policy, thereby engaging in viewpoint discrimination forbidden by the Free Speech Clause of the First Amendment. Moreover, the Court held that the university's payments to the printer who published the religious newspaper did not violate the Establishment Clause, because the payments were part of program that had a secular purpose—fostering student learning and creativity—and that were available to all publications, regardless of their particular religious viewpoint or lack thereof.

THOMAS WROTE MAGISTERIAL OPINIONS THAT INVESTIGATED THE ORIGINAL UNDERSTANDINGS OF THE CONSTITUTION.

Souter dissented. He argued that there was no free-speech violation because there was no viewpoint discrimination: The university's decision to prohibit the reimbursement of printer expenses for magazines with a religious editorial was no different from the decision to prohibit the reimbursement of all magazines except those devoted to cooking. Souter also argued that reimburse-

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ment would violate the Establishment Clause because the state was subsidizing the propagation of a religious point of view. In support of his position, he relied on Madison's *Memorial and Remonstrance on Religious Observance* in which Madison assailed a legislative proposal that would have taxed citizens of Virginia in order to support churches.

Like his *Adarand* opinion, Souter's *Rosenberger* opinion faithfully represents the view of the liberal establishment that educated him. Under this view, religion is something that can be practiced privately and dissected publicly at a university in history, anthropology, and psychology classes. Religion, however, must be assiduously kept from the public square, particularly when that square is an educational institution of any kind.

This principle of separation between religion and state has been sold as a way of preventing the government from favoring religion. In reality, it has a way of uniquely disfavoring religious viewpoints and maximizing the influence of the predominantly liberal secular ideas of institutions of public education. Under the conventional liberal view of the Establishment Clause, the Constitution would forbid a public university from having a program of encouraging student writing and debate that refunds the printing costs of a religious magazine even if it simultaneously funds magazines celebrating the philosophies of John Dewey, Karl Marx, and Donald Duck.

ANY COURT NOMINEE SHOULD BE ABLE TO SHOW LONG-STANDING COMMITMENT TO THE CONSERVATIVE LEGAL MOVEMENT.

In his concurrence, Thomas first stripped this view of the patina of historical legitimacy Souter tried to give it. Thomas pointed out that the program Madison attacked in his *Remonstrance* provided special benefits to religious institutions alone: Madison complained that this forced civil society to take "cognizance" of religion. A funding program for student journalism and debate that includes religiously inspired magazines does not give special benefits to religion, but simply allows religious magazines to enjoy the same benefits as other magazines. Only a program that discriminates against religious magazines—the very kind of program that the University of Virginia was running—takes "cognizance" of religion.

Moreover, Thomas suggests that the conventional Establishment Clause principles are incoherent on their own terms. Tax exemptions have been provided to religious and secular institutions alike as charitable recipients for 200 years because support for charity has a secular purpose. Yet these are functionally and economically equivalent to direct aid given to religious institutions that are contributing to some secularly defined program, like encouraging intellectual debate or chastity among the young. Thomas questions how direct aid to institutions could be different from tax exemptions if both are given as part of general program that has a secular purpose and is open to secular institutions. He thereby forces us to ask: Is a deep legal principle underlying this distinction? Or is it the political calculation that, while the curtailment of direct aid might provoke grumbles from the people, the termination of tax exemptions would lead to a wholesale constitutional amendment of the Establishment Clause that the modern Court has created.

The dramatic difference in performances of Thomas and Souter suggests a few essential considerations which should guide the next conservative president in his choice of a nominee:

(1) The next nominee should show an established commitment to the conservative legal movement; he should, in other words, have "reputational capital" invested in conservative legal thought. The difference between Thomas's and Souter's relation to conservative thought before they were appointed almost certainly bears on the very different paths they have followed on the Court. Thomas had not only met and conversed with the members of the conservative legal movement, but was himself one of the leaders of the movement in the area of civil rights. Thus, Thomas came to the Court inclined to articulate principles that he had been on record as supporting and, in one area, had formulated himself.

Souter, by contrast, had never made any contribution to conservative legal thought or been part of the conservative legal movement. Although he had been the attorney general under a conservative governor in New Hampshire, his legal thinking had never been systematically exposed to originalism and other conservative jurisprudential movements that gained renewed strength in the 1980s. Without any reputational capital invested in conservative legal thought, it is not surprising that Souter fell back on the jurisprudence of his legal educators and the current elite legal establishment, which is substantially to the left of the country as a whole.

Another important consequence of their different associations may be a difference in psychological commitment to conservatism. In participating in the fledgling conservative movement in law, Thomas cemented many friendships through what St. Augustine called "the warmth of kindred studies." Such friendships naturally sustain the intellectual outlook previously adopted in the face of predictable pressures of the Washington establishment. Moreover, the network of friendships from the conservative movement has very practical consequences as well. Thomas has largely hired clerks who are associated with the conservative legal movement. After his first few years, Souter has hired predominantly liberal clerks, some strategically recommended by the overwhelming liberal community of law professors at leading law schools.

(2) Although the next nominee emphatically does not have to be a Washington insider, he should have been tested in Washington at some point in his career. Thomas's outlook was forged in the heat of one of the most contentious national issues of our time—civil rights. He had already taken positions for which he had paid a price in

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public attacks on his views and his character. Souter, on the other hand, had spent the major part of his career on relatively less consequential issues far from Washington and far from the influence of the predominantly liberal national media and opinionmakers. While some of his opinions on the New Hampshire Supreme Court were vaguely conservative, they were never important enough to be challenged by the liberal legal establishment.

Thomas thus was tested in his beliefs in a way Souter could not have been. Once both were put in the national spotlight of the Supreme Court, it was far more certain that Thomas would be steadfast in adhering to conservative views despite an initial reception that was certain to be hostile. A justice who has not been tested, like Souter (or Justice Lewis Powell), is much more likely to be blown from side to side by the very powerful political gusts at the storm center of the Court.

There are other considerations worth taking into account in choosing a justice, although they are admittedly less important than the first two:

(3) The justice should be persuasive with his colleagues. Although the ability of any justice, no matter how incisive and collegial, to make a difference in the way his colleague votes is limited, in a few close cases over a justice's career he or she may hope to sway others. The qualities required for persuasion are keen analytical ability (to spot possible coherent lines of analysis that a colleague might join), a persuasive pen, and a friendly, extroverted nature (to make the justice's colleagues want to be in the same corner). On the evidence of this term, Thomas has all these qualities.

(4) The justice should have some understanding of economic analysis. Although this essay has addressed only constitutional law, so much of the best understanding of statutory law, both public and private, turns on economic concepts such as efficiency, consumer welfare, and cost-benefit analysis. A justice literate in economics has a substantial advantage in interpreting such statutes. Economic literacy does not necessarily entail that the nominee be a law and economics professor or have an academic degree in economics, but simply that the nominee have been exposed to systematic economic analysis during his or her career. Thomas, for instance, had taken an intensive course in economics for judges when he was appointed to the District of Columbia Circuit.

With the benefit of such considerations and the very large supply of lawyers and jurists in the conservative legal movement who would make excellent nominees, I am confident that the next president can nominate individuals who will join the pantheon of truly great Supreme Court justices: like Chief Justice John Marshall, Justice George Sutherland, Justice Scalia, and, if he continues to meet the standard he set last term, Justice Clarence Thomas himself.

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We the Slaveowners

In Jefferson's America, Were Some Men Not Created Equal?

Dinesh D'Souza

Although slavery ended in the United States more than a century ago, its legacy continues to be disputed among scholars and to underlie contemporary debates about public policy. The reason for this is that slavery is considered the classic expression of American racism, and its effects are still viewed as central to the problems faced by blacks in the United States. Slavery seems to be the wound that never healed—the moral core of the oppression story so fundamental to black identity today. No wonder that bitterness generated by recollections of slavery has turned a generation of black scholars and activists against the nation's Founding—against identification with America itself.

"Jefferson didn't mean it when he wrote that all men are created equal," writes historian John Hope Franklin. "We've never meant it. The truth is that we're a bigoted people and always have been. We think every other country is trying to copy us now, and if they are, God help the world." He argues that, by betraying the ideals of freedom, "the Founding Fathers set the stage for every succeeding generation of Americans to apologize, compromise, and temporize on those principles."

Far from being proof of distinctive American evil, racism is a peculiar reflection of America's moral conscience.

In *Black Odyssey*, Nathan Huggins condemns the American Framers for establishing, not freedom, but "a model totalitarian society." Huggins condemns the Framers for refusing to mention the words "slave" or "slavery" in the Constitution in an effort to "sanitize their new creation" and avoid "the deforming mirror of truth." The Founding, he concludes, was simply "a bad way to start."

Speaking on the 200th anniversary of the Constitution, former Supreme Court Justice Thurgood Marshall refused to "find the wisdom, foresight, and sense of justice exhibited by the Framers particularly profound. The government they devised was defective from the start." Marshall urged that instead of jingoistic celebration, Americans should seek an "understanding of the Constitution's defects," its immoral project to "trade moral principles for self-interest."

Is it true that the American Founding was corrupted by a base and unwarranted compromise with slavery, and that the Framers of the Constitution, many of whom were slaveowners, revealed themselves as racist hypocrites? Must we agree with the abolitionist William Lloyd Garrison, who charged that the American Founding was a "covenant with death," an "agreement with hell," and a "refuge of lies," an appraisal endorsed by the great black leader Frederick Douglass? If these charges are true, then America is indeed ill-founded, blacks are right to think of themselves as alienated "Africans in America," and the hope for racial amity constructed upon the liberal democratic vision of the Founding becomes a chimera.

On the other hand, if the Framers are exonerated of the charges of racist hypocrisy, then their blueprint for America might provide a viable foundation for helping blacks and whites to transcend the pathology of race. Indeed, it is the vision of Thomas Jefferson and the Framers that provides the only secure basis for a multiracial society, in which citizens are united not by blood or lineage, but by virtue of their equality.

Of Human Bondage

Notwithstanding the vilification of American history by many commentators, the institution of slavery was neither peculiarly American nor peculiarly white. Not only was slavery extensively practiced in the ancient world—Egypt, Mesopotamia, China, India, and elsewhere—but in the modern era Africans and American Indians practiced slavery, Arabs actively promoted the slave trade, and thou-

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sands of blacks in America were slaveowners.

The practice of whites owning slaves developed in the United States in line with universal practices, including prevailing Western institutions that held millions of whites in various degrees of unfreedom. In this context, it is not hard to understand Charles Pinckney's amazement, during the debates over the American Founding, over questions about the morality of slavery. "If slavery be wrong," Pinckney erupted, "it is justified by the example of all the world." In most parts of the world, slavery was uncontroversial for the simple reason that the concept of freedom simply did not exist. Writes African-American scholar Orlando Patterson, "There was no word for 'freedom' in most non-Western languages before contact with Western peoples."

Prior to the development of a modern Western notion of freedom, most people lived in a world shaped by what historian David Brion Davis terms "the normal network of kinship ties of dependency, protection, obligation, and privilege," a system that included various forms of patronage and servitude.

Nathan Huggins writes that slavery evolved in a social system radically different from our own, one that "regarded servants and laborers as base people," that used "hunger and the lash as a goad to productivity," that maintained discipline by means of "maiming, dismemberment . . . torture, the rack, beheading, burning at the stake, impaling." Between white laborers and black slaves, Huggins writes, "the differences were more in degree than in kind."

Historian Oscar Handlin notes that in Europe, as in much of the world, the antithesis of the term "free" was not "slave" but "unfree," and the vast majority of people lived in servitude or partial freedom. Involuntary bondage was common. "A debtor could be sold" to pay off his debts, he writes, vagrants and vagabonds "might be bound over to the highest bidder, their labor sold for a term," and criminal offenses were routinely punished with sentences of forced public service, "sometimes for life."

Many whites became indentured servants in America; they bound themselves to a planter or company for four to seven years in return for free passage across the Atlantic and some starting-up provisions. Like English servants, bondsmen in America were frequently bought and sold, or used as gambling stakes. "Under such circumstances," writes Gordon Wood in *The Radicalism of the American Revolution*, "it was often difficult for the colonists to perceive the distinctive peculiarity of black slavery."

Until the 18th century, few Europeans had moral qualms about slavery, which contradicted no important social value for most people around the world. In the Arab world, which was the first to import large numbers of slaves from Africa, the slave traffic was truly cosmopolitan. Slaves of every hue and origin were sold in open bazaars. The Arabs played an important role as middlemen in the trans-Atlantic slave trade, and contemporary research suggests that between the 7th and the 19th centuries they transported more than 14 million black slaves across the Sahara and the Red Sea—a larger number than were shipped to the Americas.

Native American Indians practiced slavery on each other, long before Europeans arrived to practice it on them. For several tribes in the American Northwest, slaves constituted between 10 and 15 percent of the population. The Cherokee employed "slave catchers" to retrieve wounded combatants from other tribes, although the Cherokee preferred to kill enemies rather than take them captive. In some Indian tribes, slaveowners routinely killed large numbers of slaves in potlatch ceremonies to prove how wealthy they were.

Among Africans, the three powerful kingdoms of Ghana, Songhay, and Mali all relied on slave labor. Nor were these slaves exclusively blacks: The emperor Mansa Musa, for example, purchased Turkish slaves for his court in Mali. White Europeans who were shipwrecked off the west coast of Africa were also enslaved. The Ashanti of West Africa customarily enslaved all foreigners. African slavery was both widespread and uncontroversial. Historian Paul Lovejoy argues that "in the American context, slavery was introduced from the outside and always relied on the importation of slaves," while "in Africa slavery evolved from indigenous institutions."

In a recent study, John Thornton shows that slavery was far more deeply embedded in Africa than in Europe because Europeans recognized land as the primary source of private wealth, whereas "slaves were the only form of

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private, revenue-producing property recognized in African law." Tribal chiefs in Africa, working through Arab middlemen, sold millions of blacks to Europeans and supplied the trans-Atlantic slave trade without any fundamental modification of the institutions and values of Africa. According to Basil Davidson in *The African Slave Trade*: "The notion that Europe altogether imposed the slave trade on Africa is without any foundation in history.... Those Africans who were involved in the trade were seldom the helpless victims of a commerce they did not understand: On the contrary, they responded to its challenge. They exploited its opportunities."

Contrary to the popular belief nourished by Alex Haley's novel *Roots*, Europeans did not typically invade African tribes to chase down and capture slaves. Many slaves purchased by Europeans were already slaves in Africa. Income from the slave trade made many African chiefs and tribes rich. The grim reality of the African slave trade between Africa and America was summed up by Zora Neale Hurston, the great black writer of the Harlem Renaissance in the early part of the 20th century: "The white people held my people in slavery here in America. They had bought us, it is true, and exploited us. But the inescapable fact that stuck in my craw was: My people had sold me.... My own people had exterminated whole nations and torn families apart for a profit before the strangers got their chance at a cut. It was a sobering thought. It impressed upon me the universal nature of greed."

Racism and Slavery

American slavery was prompted not by racism but by the pursuit of profit. There was work to be done building the New World, and slavery provided the unpaid labor to do the job. Scholars are fairly unanimous that African slaves were purchased and transported to America for reasons of convenience and economic gain. How, then, did American slavery assume a distinctively racial character?

Marxist scholars have a powerful answer. "Race relations did not determine the patterns of slavery in the new world," writes historian Eugene Genovese, "the patterns of slavery...determined race relations." The Marxist view is that racism developed and spread in America as an ideology to rationalize the enslavement and exploitation of blacks by a white master class. Fortified by racism from the beginning, American slavery itself fostered and institutionalized bigotry.

This view draws on the insight that C.R. Boxer popularized: "One race cannot systematically enslave members of another for centuries without acquiring a conscious or unconscious feeling of racial superiority." That is why, in many ancient cultures, it was customary to brand or tattoo slaves to confirm their social stigma. But in the United States no such measures were necessary. Africans were chosen for slavery in part because they were considered inferior as a race. They already wore a racial uniform, which itself became the mark of slavery, and even later a stigma of shame and inferiority.

The Marxist view contains a good deal of truth. Even though not all blacks in America were slaves, and not all slaves in America were black, over time these nuances became blurred, and in crucial respects racism and slavery became synonymous, in perception if not in operation. The consequence was a virtually inseparable association in the American mind between the degradation of slavery and the degradation of blackness. Yet the Marxist account does not explain what economically exploitative purpose racism serves by tormenting the free black population.

This question is illuminated by considering the differences between slavery in the United States and slavery in Latin America. Scholars who study Caribbean and South American slavery agree that the system was extremely harsh, in some respects harsher than in the United States. Reporting to absentee owners in Spain and Portugal, ruthless overseers wielded the lash over gigantic plantations of Africans, working them with little apparent concern for their health or longevity. The slave mortality rate was far higher in Latin America than in the United States.

Yet partly through the influence of the Catholic Church, Latin American slave laws were far more benign than those in the United States. Nowhere in the United States was marriage legal for slaves, whereas slaves in Latin America had a legal right to marry and receive the sacraments. Because of the church's emphasis on family unity, slave families in Latin America had specific rights, including legal protections against arbitrary dissolution.

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Thurgood Marshall refused to "find the wisdom, foresight, and sense of justice exhibited by the Framers particularly profound. The government they designed was defective from the start."

By contrast, slaveowners in the United States had full discretion over whether to break up families and separately sell parents and children. Every American slave state except South Carolina had laws against miscegenation. In Latin America, because of the small number of white women who settled in the Spanish colonies, black

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concubinage was everywhere legal, public, even moderately respectable. In fact, according to Stanley Elkins, miscegenation was generally considered a good thing in Latin America because it had a whitening effect, whereas it was generally considered a bad thing in the United States because it had a darkening effect.

Manumissions were easier, both as a matter of law and practice, in Latin America. Some American states severely restricted the right of masters to free their slaves, fearing the presence of a resentful class of free blacks among the white population.

The consequence of the Latin American system was the gradual emergence of a free colored class, which was considered neither white nor black, but named for the specific proportion of white and black and Indian blood. It was common throughout Latin America for masters to free their offspring by slave women. In the United States, by contrast, the progeny of master and slave usually remained slaves. Thus the United States gradually embraced a doctrine unique in the history of slavery: All children with any recognizable black ancestry would be considered black. To be white meant, *de jure* if not *de facto*, to be a thoroughbred European, uncontaminated by a single drop of Negro blood. Even after slavery, the one-drop rule would ensure that blacks, as a group, would remain distinct and distant from whites who could think of themselves as a ruling class.

None of this means that no enduring hierarchy developed in Latin America. It did, but it was primarily a social and not a racial hierarchy. The colored class emerged as a buffer zone, an intermediary between pure whites and pure blacks; in many countries, the colored class became the national majority. Dark skin continued to carry some stigma, but it was entirely possible to erase this through wealth, political status, and intermarriage with others of lighter skin. Racial tensions persist today in Brazil, Cuba, and other Latin American countries, but the racial legacy of slavery there is unquestionably more benign than in the United States.

Scholars have struggled to explain why the slave systems in North America and South America evolved so differently. No doubt many factors are responsible, including religious and cultural differences. But an often-overlooked cause lies in the radically different systems of government. Spain and Portugal, which maintained South American colonies, were rigid monarchies. From the seat of government to the church, presided over by the Holy Inquisition, freedom defined as the rights of self-government and individual self-determination simply did not exist. Consequently, Spanish and Portuguese plantation owners did not have to explain to anyone, even to themselves, why they were enslaving large numbers of Africans, depriving them of liberty, and stealing the fruits of their labor. Slavery was a practice that seemed entirely reasonable for social and economic life, and one that did not contradict any of the institutions in their home countries. In short, South American slaveowners were under very little obligation to justify or rationalize slavery.

By contrast, the United States in the late 18th century became a free society with a liberal democratic creed. Inspired by the words of a Southern slaveholder, Thomas Jefferson, Americans fought a revolution in order to secure the proposition that all men are "created equal" and "endowed by their Creator with certain inalienable rights." Historian Duncan MacLeod writes that "the very term slavery was among the most frequent in the Revolutionary vocabulary. The war was seen as essentially a battle against political servitude." It is not easy for a society revolting in the name of liberty and equality to justify slavery. The British Tory Samuel Johnson summarized the dilemma: "How is it that we hear the loudest yelps for liberty among the drivers of Negroes?"

CONTRARY TO THE VILIFIERS OF AMERICAN HISTORY, SLAVERY WAS NEITHER PECULIARLY AMERICAN NOR PECULIARLY WHITE.

Many Americans found a way to resolve the contradiction. All men are created equal, blacks are being bought and sold in America, therefore blacks must not be men. After all, if blacks are men, and all men are created equal, then blacks are entitled to the same rights as whites, including the right not to be held in captivity. In order to sustain slavery, therefore, the premise of black humanity must be denied. This explains the contorted logic of the infamous *Dred Scott* decision of 1857 in which the Supreme Court invoked black inferiority to exclude slaves from constitutional protection, and pronounced slave ownership as a fundamental property right.

The doctrine that slaves were legally equivalent to property generated both legal and human contradictions. In fact, slave laws implicitly recognized the humanity of slaves by holding them accountable for their actions. Nathan Huggins writes, "A pig in the corn was not a thief; a slave in the smokehouse was. A horse that trampled the life from a cruel master was no murderer; a slave who struck out against brutality was."

So the Marxist argument is essentially correct: The ideology of racial superiority, which originated to explain civilizational differences, became consolidated in America as a convenient rationalization for continuing oppression. What some Marxist scholars seem to miss is that racism in America was not an economic but a *moral* justification. Although they limited the franchise to propertied white males, the American Founders were not insincere in proclaiming their allegiance to principles of liberty and equality. Southerners who were in the forefront of the American Revolution, and no less committed than Northerners to the principles of the Declaration and the Constitution, found themselves in a particular quandary as they administered their forced-labor plantations.

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Racism in the American South served to rationalize and justify behavior that flatly contravened the nation's political ideals.

If Americans did not believe in equality, then racism would serve no ideological or material purpose. Racism, therefore, flourished in the gap between the principles of the constitution and its pragmatic concessions. Far from being proof of distinctive American evil, racism is a peculiar reflection of the moral conscience of America, and of the West. It reflects the oppressor's need to account for the betrayal of his highest ideals. Despite the ignominious pedigree of racism as a justification for exploitation, in all of human history only the white man has felt compelled to provide such a justification. Paradoxically, those who indulged in racism thereby revealed their humanity, even as they disregarded the humanity of others. The very existence of racism implies that, from the very outset, slavery existed uncomfortably and anomalously with Jeffersonian principles.

Who Killed Slavery?

Although slavery was a universal institution, not confined to the West, what is distinctively Western is the abolition of slavery. Many people have, of course, resisted being captured and sold as slaves, but no society, including all of Africa, has ever on its own account mounted principled opposition to human servitude. In all the literature condemning Western slavery, however, few scholars have asked why a practice sanctioned by virtually all people for thousands of years should be questioned, and eventually halted, by only one.

Paradoxically, it is in America and nowhere else in the world where the legacy of slavery is a contemporary issue, the American Constitution is condemned as a document that compromised with slavery, and the Framers are routinely denounced for being racist hypocrites. The irony is compounded by the recognition that the prevailing view of the Constitution as proslavery was precisely that of Justice Taney in the *Dred Scott* decision. By contrast, Abraham Lincoln strongly denied Taney's view, and his position came to be enthusiastically embraced by Frederick Douglass, the greatest black leader of the 19th century. It is to the debates over the legitimacy of slavery in the West that we must turn to decide whether Taney and many 20th-century scholars are right, or Lincoln is.

Throughout world history, slavery had few defenders for the simple reason that it had few critics. The institution was uncontroversial, and that which is established and taken for granted does not have to be justified. The American South was unique among slave societies in history in that it produced a comprehensive proslavery ideology. In part, this was because slavery was under assault to a degree unrivaled anywhere else in the world.

The simplest defense for slavery was economic necessity: Someone has to do the dirty work, and better them than us. This position was based on an implicit premise that whites in the South were in a position to compel blacks to perform menial but necessary tasks. It is force, rather than right, that kept the system of slavery in place.

Southerners were also familiar with a European tradition, going back to the Crusades, that held it was permissible to enslave pagans but not Christians. In response to this, the leading forces in the South formulated an identical justification: Africans were heathens, so slavery would serve as a kind of moral education to introduce them to Christianity. But once slaves embraced the Christian faith of their masters, other excuses became necessary in order to justify keeping them in servitude. Here many Southern divines intervened to offer a racist rationale. They promulgated a dubious interpretation of a story in the book of Genesis in which Noah curses the descendants of his son Ham, who impudently looked upon his father's nakedness. Thus, in this account, the children of Ham were condemned to blackness and future enslavement. For a long time there was little challenge to this absurd innovation in biblical exegesis.

It was only when the institution of slavery came under moral assault for betraying the Declaration of Independence and Christian charity that many Southern apologists such as John C. Calhoun, James Henry Hammond, Edmund Ruffin, George Frederick Holmes, and George Fitzhugh responded by formulating an audacious defense of slavery as a positive good. Hammond, among others, repudiated the Jeffersonian doctrine of equality as "ridiculously absurd."

THE FOUNDERS REACHED A MIDDLE GROUND, NOT BETWEEN PRINCIPLE AND PRACTICE, BUT BETWEEN ANTISLAVERY AND MAJORITY CONSENT.

Their case for slavery depended on a paternalistic worldview in which Negroes, like women and children, occupied positions in an organic society commensurate with supposed limited moral and intellectual abilities. Eugene Genovese writes in *The Slaveholders' Dilemma,* "Southerners from social theorists to divines to politicians to ordinary slaveholders and yeomen insisted fiercely that emancipation would cast blacks into a marketplace in which they could not compete and would condemn them to the fate of the Indians or worse." Although defenders of slavery were right about the harshness of Northern capitalism, their paternalistic vision foundered in that the community of interests that could generally be presumed between husband and wife, or between parents and children, could not be presumed between master and slave.

The Southern doctrine of Negro inferiority immediately extended to whites, even those who were destitute and ignorant, membership in an exclusive racial club and a social position above that of all blacks, both slave and free. Edmund Morgan argues in *American Slavery, American Freedom* that the racial defense of Southern slav-

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ery strengthened, among whites, the conviction that, despite conspicuous differences of wealth and position, they were equal just as the Declaration of Independence posited. Racism, in other words, became a source of white social status.

The dilemma over slavery ultimately came down to one of the oldest Western arguments, which we find in Plato's *Republic*. The wise should rule over the unwise. During the Lincoln-Douglas debates, Stephen Douglas defended the right of states to decide for themselves whether they wanted slavery in precisely these terms:

"The civilized world has always held that when any race of men have shown themselves to be so degraded by ignorance, superstition, cruelty, and barbarism, as to be utterly incapable of governing themselves, they must, in the nature of things, be governed by others, by such laws as are deemed to be applicable to their condition."

Wisdom and Consent

We may think Stephen Douglas's view to be crude and hateful, but Abraham Lincoln did not. He agreed with Douglas: It is absurd to construct a regime in which the wise do not rule; surely no one wants the mediocre or the foolish to rule. In fact this raises a problem with democracy that the American Founders and Lincoln recognized: How can the wise, who are by definition the few, be reliably identified and chosen to rule by the many? Representative government is based on the hope that the majority will exercise their power on behalf of right, that they will choose others who are wiser than themselves to govern. Yet modern democracy introduces a crucial qualification to the claim of the wise to rule: Such rule is only legitimate when it is vindicated by popular consent. The majority is not the best judge of what is wise, but most people do recognize their own interests. Hence representative democracy is a "mixed regime," which seeks to reconcile the claims of right and expediency.

This debate is the crucial backdrop to an examination of the antislavery movement of the 18th century, because it provided the context and the moral terms for the issue. The two principles that would form the basis for the first serious challenge to the institution of slavery and the doctrine of black inferiority are both encapsulated in the Declaration of Independence: the Christian belief that all persons bear the image of God and are equal in His eyes, and the distinctly modern European political conception that all human beings enjoy a natural right to freedom and self-government that can only be abridged by their consent.

In the second half of the 18th century, a small but militant group of religious and political activists began to apply the doctrine of equality more broadly and concretely in order to reform the injustices of this world, what David Brion Davis terms "a sacralization of social progress." Tocqueville wrote: "We have seen something absolutely without precedent in history—servitude abolished, not by the desperate effort of the slave, but by the enlightened will of the master. . . . It is we who have given a definite and practical meaning to the Christian idea that all men are born equal, and applied it to the realities of this world."

The first group to mount an organized campaign against slavery was the Society of Friends, the Quakers, first in Europe in the second half of the 17th century, then in the United States. Ignoring passages in the Bible that had been invoked to justify slavery, leading Quakers such as George Fox in England and John Woolman and Anthony Benezet in the U.S. emphasized that spiritual freedom—man's capacity to choose the good in his quest for moral perfectibility—required freedom of choice in this life. Slavery, according to this view, represented the moral imprisonment of God's children and thus was wrong, even blasphemous. Drawing on the religious energies of the Great Awakening, the first of a serious of revival

Frederick Douglass wrote that slavery was simply a "scaffolding to the magnificent structure [of the Constitution], to be removed as soon as the building is completed."

movements that would energize America between the mid-18th century and the end of the 19th, many evangelical Protestants began to embrace a similar interpretation. They applied Christ's injunction—do unto others as we would have them do unto us—directly to the relationship between slaveowners and slaves.

In 1772, Lord Mansfield issued a landmark decision in Britain abolishing slavery on English soil. In 1833, thanks to the abolition campaign of Granville Sharp, Thomas Clarkson, and especially William Wilberforce, slavery was outlawed throughout the British empire. Economic motives undoubtedly contributed, but scholars now generally agree that religious and political principles were indispensable in achieving the abolition of servitude. Antislavery victories soon spread to France, which forbade slavery in its territories in 1848, and to other European nations as well. In a bizarre development, tribal leaders in Gambia, Congo, Dahomey, and other African nations that had prospered under the slave trade sent delegations to

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London and Paris to vigorously protest the abolition of slavery. "Africans felt that the rules of their traditional life had been called into question," Mohamed Mbodj writes, "by initiatives which destabilized the bases of their society."

Eventually the British example, backed by diplomatic and even military measures, eradicated slavery in all foreign areas of influence. In America, although there were many among them who shared prevailing prejudices against blacks, the abolitionist movement contained the first antiracists. Leading abolitionists agreed that blacks were civilizationally inferior and incapable of ruling themselves. But black inferiority, they said, is no justification for slavery; rather, it is the product of slavery itself. Some abolitionists endorsed the idea of helping blacks to resettle in Africa, but those who recognized the implausibility of such schemes attempted to show that blacks were capable of living as free people. In order to directly rebut the Southern argument that blacks were better off being ruled by their betters, abolitionists began a slow but relentless quest for intelligent blacks who would be standing refutations of theories of intrinsic inferiority.

Three prime exhibits for opponents of slavery to demonstrate the intellectual capacity of Negroes were

Booker T. Washington said, "Notwithstanding the cruelty and moral wrong of slavery, we are in a . . . more hopeful condition, materially, intellectually, morally, and religiously, than . . . black people in any portion of the globe."

Phillis Wheatley, the Negro poet; Benjamin Banneker, the black mathematician and scholar; and Frederick Douglass, the runaway slave and later statesman and orator. For many Americans, it was so unbelievable that a black person could produce a serious work of literature that 18 eminent whites (including John Hancock, who signed the Declaration of Independence, and Thomas Hutchinson, the governor of Massachusetts) offered an "attestation to the publick" that, upon examination, Wheatley's poems were verified to be her original work and that she was indeed a full-blooded black woman. Additionally, abolitionists stressed the physical and mental sufferings of slaves in order to recruit humanitarian sentiment on behalf of emancipation. No one was more successful in this than Harriet Beecher Stowe, author of *Uncle Tom's Cabin*, published in 1852. Perhaps the most influential political tract of the 19th century, Stowe's sentimental novel was credited by Lincoln for turning the North irrevocably against slavery, setting the stage for the confrontation that culminated in the Civil War.

Wolf by the Ears

> The only distinction between freedom and slavery is this: In the former state, a man is governed by the laws to which he has given his consent; in the latter, he is governed by the will of another.
>
> —Alexander Hamilton

Justice Taney's argument in *Dred Scott*, shared by many contemporary scholars, that the American Founders were hypocrites who produced a proslavery regime, rests on the apparent contradiction between stated ideals and actual practice. It seems hard to explain how a slaveowner like Thomas Jefferson could declare that "all men are created equal." Nor is it obvious how 55 men in Philadelphia, some 30 of whom were slaveowners themselves, could proclaim antislavery principles while endorsing a document that would permit slavery to continue in the Southern states. This is the force behind Taney's insistence that these men could not have meant what they said. Taney's interpretation, that the Constitution secures no rights for blacks that whites must respect, leads directly to the contemporary suggestion that the Founders were motivated not by noble ideals but by crass self-interest.

That the American Founders were self-interested is impossible to deny. Thomas Jefferson owned some 200 slaves and did not free them. Yet the case of Jefferson is revealing. Far from rationalizing plantation life by adopting the usual Southern arguments about the happy slave, Jefferson the Virginian vehemently denounced slavery as flatly inconsistent with justice. Jefferson recognized that blacks were not slaves "by nature," only by convention. Although he agreed with the scientific view of his time, and suspected that blacks were inferior to whites in capacity, Jefferson expressed his wish that black accomplishment prove him wrong. (Jefferson's empirical observations about black inferiority were not shared by either Benjamin Franklin or Alexander Hamilton.) Moreover, Jefferson strongly denied that possible black intellectual or civilizational inferiority justified white enslavement: "Whatever be their talents, it is no measure of their rights." Consequently, the only rationale for Jefferson not freeing his slaves is expediency. "Justice is in one scale, and self-preservation in another."

The dilemma of Jefferson and the American Founders may be summarized as follows: They fully recognized that a democratic society depends not just on wisdom, but also on consent. Consequently, there is no justification whatever for ruling another human being without his consent.

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Blacks are human beings, and in possession of natural rights. Slavery is therefore against natural right and should be prohibited. But how? Here Jefferson and the Founders faced two profound obstacles. The first was that virtually all of them recognized the degraded condition of blacks in America. Whatever the cause of this condition, the Framers recognized that it posed a formidable hurdle to granting to blacks the rights of citizenship. By contrast with monarchy and aristocracy, which only require subjects to obey, self-government requires citizens who have the moral and civilizational capacity to be rulers.

Jefferson also recognized the existence of intense and widespread white prejudices against blacks that seemed to prevent the two peoples from coexisting harmoniously on the same soil. While Jefferson agonized over the problem, Madison proposed a strange but bold scheme for solving the nation's multiracial dilemma of the time. The government, he suggested, might take the land it had acquired from the Indians, sell it to the new European immigrants, and use the money to send blacks back to Africa. The concept of relocating blacks in Africa was later endorsed in principle by Lincoln and retained its appeal among many whites and some blacks until the Civil War.

The deference of Jefferson and the American Founders to popular prejudices strikes many contemporary scholars as excessive. Some suggest that popular convictions simply represented a frustrating obstacle that the Founders should have dealt with resolutely and forcefully. In a democratic society, however, the absence of the people's agreement on a fundamental moral question of governance is no mere technicality. The case for democracy, no less than the case against slavery, rests on the legitimacy of the people's consent. To outlaw slavery without the consent of the majority of whites would be to destroy democracy, and thus to destroy the very basis for outlawing slavery.

The men gathered in Philadelphia faced a genuine dilemma. For them to sanction slavery would be to proclaim the illegitimacy of the American Revolution and the new form of government based on the people's consent; yet for them to outlaw slavery without securing the people's consent would have the same effect. In practical terms as well, the choice facing the men gathered in Philadelphia was not to permit or to prohibit slavery. Rather, the choice was either to establish a union in which slavery was tolerated, or not to have a union. Any suggestion that Southern states could be persuaded to join a union and give up slavery can be dismissed as implausible in the extreme.

Thus the accusation that the Founders compromised on the Declaration's principle "all men are created equal" for the purpose of expediency reflects a grave misunderstanding. The Founders were confronted with a competing principle, also present in the Declaration, that governments derive their legitimacy "from the consent of the governed." Both principles must be satisfied, and where they cannot, compromise is not merely permissible but morally required.

The American Founders found a middle ground not between principle and practice, but between antislavery and majority consent. Not only are these closely related principles, but in a philosophic sense, they are the same principle. How did the Framers seek to mediate between their rival claims? By producing a Constitution in which the concept of slavery is tolerated, in deference to consent, but nowhere given any moral approval, in recognition of the slave's natural rights. Indeed nowhere in the document is the term "slavery" used. Slaves are always described as "persons," implying their possession of natural rights. The Founders made concessions to slavery as a matter of fact but not as a matter of right. In addition, the Framers produced a Constitution that nowhere acknowledges the existence of racial distinctions, thus producing a document that transcended its time and provided a charter for a better future.

LINCOLN WAS PRESENTED WITH TWO OPTIONS: OVERTHROW DEMOCRACY OR SECURE CONSENT THROUGH PERSUASION.

None of the supposed contradictions that contemporary scholars have located in the American Founders were unrecognized by them. Many of the Framers justified their toleration for slavery on prudential grounds: In the 1770s and 1780s, they had reason to believe that slavery was losing its commercial appeal. In this they were wrong. Eli Whitney's invention of the cotton gin in 1793 (which the Founders could not possibly have anticipated) revived the demand for slavery in the South. Even so, the test of the Founders' project is the practical question: Did the American Founding strengthen or weaken the institution of slavery?

The intellectual and moral ferment that produced the American Revolution, Gordon Wood argues, should be judged by its consequences. Before 1776, slavery was legal in every state in America. Yet by 1804, every state north of Maryland had abolished slavery, either immediately or gradually; Southern and border states prohibited further slave importations from abroad; and Congress outlawed the slave trade as soon as it was allowed to, in 1808. Slavery was no longer a national but a sectional institution, and one under moral and political siege. "Before the revolution, Americans like every other people took slavery for granted," Wood says. "But slavery came under indictment as a result of the same principles that produced the American Founding. In this sense, the prospect of the Civil War is implicitly contained in the Declaration of Independence."

Abraham Lincoln was one of the most astute students of the American Founding in his time or since. He not only perceived the Framers' dilemma, but knew that he inherited it. The principle of majority rule is based on Jefferson's doctrine that "all men are created equal," yet

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what Harry Jaffa terms the "crisis of the house divided" arises when the majority denies that "all men are created equal"—that is, denies the basis of its own legitimacy. Lincoln was presented with two concrete options: working to overthrow democracy, or working to secure consent through persuasion.

Conscious that he, too, must defer, as the Founders did, to prevailing prejudices, Lincoln nevertheless sought to neutralize those prejudices so they did not become a barrier to securing black freedom. In a series of artfully conditional claims about blacks—"If God gave him little, that little let him enjoy"—Lincoln paid ritual obeisance to existing racism while drawing even racists into his coalition to end slavery. Lincoln made these rhetorical concessions because he knew that the possibility for securing antislavery consent had improved since the 1780s.

In one of the clearest commentaries on the Declaration, Lincoln observed: "They intended to include all men, but they did not intend to declare all men equal in all respects. They did not mean to say all were equal in color, size, intellect, moral developments, or social capacity. They defined with tolerable distinctness in what respects they did consider all men created equal—equal in certain inalienable rights. They did not mean to assert the obvious untruth, that all were then actually enjoying that equality, nor yet, that they were about to confer it immediately upon them. . . . They meant simply to declare the *right*, so that the *enforcement* of it might follow as fast as circumstances should permit."

By working through rather than around the democratic process, Lincoln justified the nation's faith in the untried experiment of representative self-government. In vindicating the slave's right to rule himself, Lincoln also vindicated the legitimacy of democratic self-rule. And Lincoln's position came to be shared by Frederick Douglass, who once denounced the Constitution but who eventually came to the conclusion that it contained antislavery principles: "Abolish slavery tomorrow, and not a sentence or syllable of the Constitution need be altered." Slavery, he concluded, was simply a "scaffolding to the magnificent structure, to be removed as soon as the building is completed."

It took a civil war to destroy slavery, and with it much of the infrastructure and economy of the South, between 1860 and 1865. More than a half million whites died in that war, "one life for every six slaves freed," C. Vann Woodward reminds us. Although the question of slavery in the United States was ultimately resolved by force, Lincoln and Douglass both believed the triumph of the union and the emancipation of the slaves represented not the victory of might over right, but the reverse: Justice had won over expediency and the principles of the American Founding had at long last prevailed.

The Price of Freedom

Whatever its functional relevance in a world utterly different from our own, slavery was a moral crime. People should not own other people. Unfortunately the practice of slavery persisted into the 20th century in many parts of Asia, Africa, and the Middle East: Saudi Arabia and Yemen outlawed it only in 1962. According to the British Anti-Slavery International, which monitors the institution worldwide, it is still practiced covertly in Southeast Asia, Latin America, and the Arab world. In Mauritania alone, nearly 100,000 people are estimated to be enslaved.

The abolition of slavery in the West did not produce the abolition of racism. As George Fredrickson puts it, "The slaveholding mentality . . . remained the wellspring of white supremacist thought and action long after the institution that originally sustained it had been relegated to the dustbin of history." At the same time, abolition constitutes one of the greatest moral achievements of Western civilization. The reason for the acceptability of slavery prior to the 18th century is that the idea of freedom simply did not exist in an applied and comprehensive sense anywhere in the world.

It is understandable that American blacks, on discovering the circumstances in which their ancestors were brought to this country, would feel at best a qualified patriotism. But upon reflection this ambivalence may be unwarranted. Africans were not uniquely unfortunate to be taken as slaves; their descendants were uniquely fortunate to be born in the only civilization in the world to abolish slavery on its own initiative. For Zora Neale Hurston, the black feminist writer of the Harlem Renaissance, the legacy of slavery is one of opportunities for the future, not unceasing submersion in the past.

"From what I can learn, it was sad," she wrote. "Certainly. But my ancestors who lived and died in it are dead. The white men who profited by their labor and lives are dead also. I have no personal memory of those times, and no responsibility for them. Neither has the grandson of the man who held my folks. . . . I have no intention of wasting my time beating on old graves. . . . I do not belong to the sobbing school of Negroes who hold that nature somehow has given them a low-down dirty deal and whose feelings are all hurt about it. . . . Slavery is the price I paid for civilization, and that is worth all that I have paid through my ancestors for it."

A similar position was elaborated by Booker T. Washington, who was born a slave but went on to become the most powerful black statesman and educator in the United States: "Think about it: We went into slavery pagans; we came out Christians. We went into slavery pieces of property; we came out American citizens. We went into slavery with chains clanking about our wrists; we came out with the American ballot in our hands. . . . Notwithstanding the cruelty and moral wrong of slavery, we are in a stronger and more hopeful condition, materially, intellectually, morally, and religiously, than is true of an equal number of black people in any other portion of the globe."

Washington's argument is that slavery proved to be the transmission belt that nevertheless brought Africans into the orbit of modern civilization and Western freedom, so that future generations of black Americans would be far more free and prosperous than their former kinsmen in Africa. Washington's conclusion seems hard to deny: Slavery was an institution that was terrible to endure for slaves, but it left the *descendants* of slaves better off in America. For this, the American Founders are owed a measure of respect and gratitude. ☎

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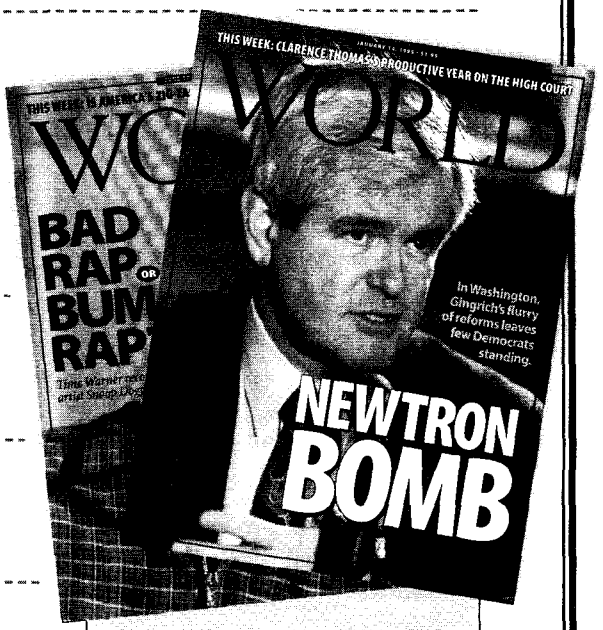
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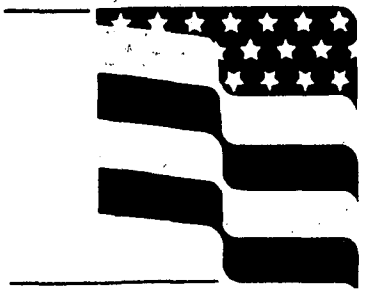

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MAGNA CHARTER?

A Report Card on School Reform in 1995

CHESTER E. FINN JR. AND DIANE RAVITCH

Two competing paradigms of education reform have emerged in the United States in recent years, and the differences between them are growing sharper. One, commonly termed "systemic reform," assumes that reform efforts should be led by government and imposed from the top down. Its advocates believe that state (or federal) authorities must set standards not only for student learning, but also for teacher training, pupil assessments, textbooks, and school resources. Though undertaken in pursuit of higher standards and better results, systemic reform relies on uniform strategies to ensure that "inputs" everywhere are equal and all schools undertake similar activities. Government resources and bureaucratic regulation are, of course, its preferred mechanism for making this happen. Much of Goals 2000 embodies this approach.

The second reform paradigm, which we call "reinventing education," embraces decentralized control, entrepreneurial management, and grassroots initiatives, all within a framework of publicly defined standards and accountability. Under this approach, public officials establish standards, make assessments, and hold schools accountable for meeting performance goals but do not themselves run the schools. Public officials also retain the power to cancel charters and school-management contracts on grounds of consistently poor performance, but they do not directly supervise or control the means by which schools pursue those ends.

Under this paradigm, education may be delivered through charter schools (licensed by public authorities such as a state, city, or local school district), "opt out" schools that secede from their local education agencies and run themselves with what amounts to a "block grant" of public funds, "contract schools" (in which a performance contract is negotiated between private educational managers and a public agency), and "choice" programs (in which students use scholarships or publicly-funded vouchers to attend the schools of their choice). In all such situations, the continuing responsibility of public authorities is to establish standards for educational and fiscal performance and monitor progress in relation to those standards. (Those who reject this degree of public accountability may, of course, turn to wholly private schools or home schooling.)

The "reinvention" approach welcomes diverse strategies and schools organized and run by various entities such as teacher cooperatives, parent associations, private corporations, religious institutions, and community-based organizations. It assumes that students and families are different and should be free to match themselves to the schools that suit them best. It requires little bureaucracy and few regulations because it rejects the proposition that schools must be centrally managed according to a single formula.

CHARTER SCHOOLS, SCHOOL CHOICE, AND PRIVATE MANAGEMENT OF SCHOOLS HAVE GAINED SUPPORT IN 1995.

We strongly favor the "reinvention" paradigm, provided that it contains one key element borrowed from the "systemic" approach: standards and accountability. It is our conviction that only clear and high standards for performance will ensure accountability, both to the marketplace (that is, to families making informed choices among schools) and to whatever public body authorizes the schools to operate.

These standards need not be national, they need not be highly detailed, they should not prescribe pedagogy or resource use, and they need not cover the entire curriculum. (Indeed, the ability of schools to add their own features to the "core" described in the standards is part of what will make them different from one another.) But only when such standards are in place—and accompanied by good tests and a steady flow of performance informa-

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tion—can parents make informed choices among schools and public authorities determine which schools deserve to retain their "charters," contracts, or accreditations.

These two approaches are now competing with each other, not only in Washington, D.C., but also in the states. Systemic reform remains the favored strategy of the Clinton administration and of some educators (especially in state departments of education and teachers unions), but the "reinvention" alternative is preferred in many other quarters—including by many elected officials, business leaders, and parents, as well as by teachers and principals who welcome the possibility of breaking free from the stifling grip of bureaucracy.

The reinvention impulse has even reached Capitol Hill, where the past year saw stirrings of the first major push in memory to "devolve" centralized activities to states, communities, and families and to lift restrictions on the use of federal aid. This impulse arises partly from the quest for better education, but also from a reaction against the regulatory burden of federal regulations and unfunded mandates.

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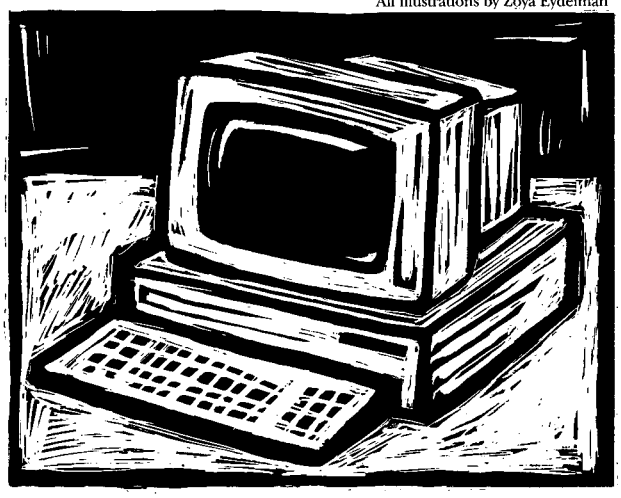

This is the motive behind recent congressional activity concerning "block grants" in areas as diverse as welfare, school lunches, and job training, as well as education aid. To be sure, turning categorical programs into block grants and devolving control to states and communities will not automatically foster reinvention. Indeed, recipients may not do much of anything. But doing away with "Washington-knows-best" approaches and removing strings from federal dollars at least permits reform-minded states and communities to experiment with new strategies for education and other public services—and closes the easy route of blaming Uncle Sam for poor results.

The federal government is so hamstrung by special interest groups that getting it out of the way of change-minded states and communities may be the most we can expect from Washington on the "reinvention" front. Certainly, all efforts by Uncle Sam to foster such reforms directly have proven halfhearted at best and fraudulent at worst. The so-called "Improving America's Schools Act" of 1994, for example, banned any use of federal aid for privately managed public schools and created a school "choice" program so laden with preconditions and constraints that it must be termed phony. It enables members of Congress to say they "voted for school choice" while ensuring that there is none.

Even rigorous accountability based on testing was discouraged by explicit prohibitions in the Goals 2000 legislation on the use of federal funds for this purpose. Those who believe that such reforms are the main hope for serious educational improvement are learning that Washington is the wrong place to look. But much is happening elsewhere in the nation under the "reinvention" banner.

Potemkin Charters

The charter school idea has picked up tremendous momentum, as have variants, such as a flock of new, miniature high schools in New York City that are not called charters but share many of their characteristics. Those qualities include a large measure of operational independence from headquarters in return for a promise to achieve certain results over a stated period of time. (New York City's quasi-charters, however, have not agreed to any educational performance goals, and their quasi-independence relies on waivers by the local teachers union, waivers that do not even apply to the schools' many other employees.)

By summer 1995, 19 states had enacted explicit "charter" school laws, including eight during the most recent legislative session (Louisiana, Arkansas, New Hampshire, Texas, Alaska, Wyoming, Delaware, and Rhode Island). Several hundred such schools were scheduled to be open this fall. Charter schools are no panacea—not in a country with 85,000 public schools—but this movement is the second-most-exciting development on the educational reform front.

Not all charter laws are created equal, however, and several enacted in recent months are so weak that they are unlikely to do much good. We think of them as "Potemkin" charter programs with an impressive facade but no substance. Some of these laws were supported by people who actually oppose charter schools on principle and had decided to undermine support for them by promoting a bill that pretended to create them. This is currently happening in New Jersey, where the state teachers union is supporting a weak charter bill in the state assembly, although a stronger, competing bill supported by the state education commissioner, the state senate, and Governor Christine Whitman may yet prevail.

Weak charter laws generally suffer from at least one of three serious failings:

- They require the prior assent of too many "stakeholders," such as a majority of teachers currently teaching in the affected schools, and contain no mechanism for creating new charter schools that do not already possess such stakeholders. Of course, it would be wonderful if existing schools converted to charter status with the support of a majority of teachers and parents working together, and that is sure to happen in some places. But there are also situations in which parents and community leaders want to start a new school, and they should be allowed to do so—with the staff they want to teach in it. (Currently, California's charter law requires the approval of a majority of teachers, as do those in Georgia, Hawaii, and New Mexico.)
- They place local school boards in sole charge of granting charters. (Wyoming, Louisiana, and Texas have

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recently enacted such laws.) Though such a limitation is invariably a key political goal of school board lobbyists, it can be fatal for charter schools, because the uniform policies of a benighted local board and risk-averse superintendent are usually what charter-seekers are keenest to escape. That is why strong charter laws either lodge the authority to issue charters with a different entity (such as a state superintendent or state board) or—better yet—create multiple windows or appeal mechanisms so that no single entity has the absolute power to deny a charter application. In Michigan and Minnesota, state universities have the authority to issue charters. In Arizona, besides vesting this authority in both local and state school boards, the legislature created a new "charter school" board exclusively for this purpose.

- They neglect to exempt charter schools from enough of the statutes, regulations, and contractual provisions that burden conventional schools. Thus, the charter school is not truly free to chart its own course. The whole point of such a school, after all, is to gain autonomy of action in return for accountability for results. The only regulations that charter schools should be expected to comply with are those governing health and safety and protections against racial discrimination. But many states leave numerous other rules in place. If a state still requires that U.S. history be taught in the 11th grade, that a school's pupil-teacher ratio cannot exceed 25:1, that 40 minutes a day must be spent on math, that certain textbooks must be purchased, and if there is no respite from seniority rules, salary schedules, or tenure requirements, then we see little point in calling an entity so regulated a "charter school." Such a charter is unlikely to be worth the paper it is printed on—and few will go to the bother of seeking such a document.
- Why have so many states created these Potemkin charter programs? The explanation, of course, has to do with power and politics, catalyzed by the education establishment's fierce resistance to changes that threaten its monopoly. Though many teachers and principals crave opportunities to "opt out" of the system and run their own schools without the incessant oversight, time-wasting regulations, and innumerable mandates of the bureaucracy, their professional organizations seldom see it this way. Thus teachers unions, school-board associations, and superintendents, if they cannot defeat the charter bill altogether, generally do their utmost to weaken it. So do other advocacy groups—for example, special education—whose stock-in-trade is rule-bound uniformity rather than diversity. In fact, the Southwest Regional Laboratory recently leveled a novel criticism: that charter schools—precisely because many of them demand a high degree of parent involvement—are unfair to children with bad parents!

Obtaining a charter does not end the hazards that await these schools. Most also encounter practical problems when they first launch. One perennial challenge is finding a place to operate a charter school. To our knowledge, no state provides charter operators with buildings or capital financing. Though this is no huge burden for existing schools that convert to charter status, it poses a great obstacle to the creation of new charter schools. Another problem is that many charter school founders and managers have little prior experience in matters such as financial management, purchasing, and marketing.

Our hunch, however, is that these are birthing and growing pains associated with a feisty, infant reform strategy that will, in time, turn into a strapping youth. We doubt that opponents will be able to halt its growth. In England, where "grant-maintained" schools have been in place for several years—and where almost a fifth of all secondary schools have "opted out" into this independent status—even the Labor Party is having to come to terms with their continued existence. Indeed, party leader Tony Blair now sends his own child to a grant-maintained school.

Gains for School Choice

There was major progress on the choice front in 1994-95, centering on Milwaukee and Cleveland. In Wisconsin, Governor Tommy Thompson succeeded in persuading the legislature to pass his proposal to expand Milwaukee's voucher experiment to include many more children and to permit attendance at church-affiliated schools. As revised, and assuming the courts eventually assent, up to 15,000 low-income Milwaukee children (nearly all of them minority) will be able to attend any school within the city limits.

In Ohio, the legislature agreed to a proposal by Governor George Voinovich to initiate a voucher "pilot" in 1996 for children in Cleveland. That city's catastrophically bad school system was "taken over" by the state under a federal court order in early 1995. Here, too, church-affiliated schools will be eligible recipients of voucher-bearing youngsters—up to 2,000 of them. And here, too, the primary beneficiaries of this reform will be low-income minority youngsters.

Court battles have already begun, and we do not doubt that choice's foes, having lost two significant political battles, will now throw vast resources into the effort to get vouchers thrown out as a violation of the "Establishment Clause" of the First Amendment. In August, the

THOUGH MANY TEACHERS WANT MORE CONTROL OVER THEIR SCHOOLS, TEACHERS UNIONS OFTEN WORK TO DEFEAT CHARTER-SCHOOL LAWS.

Wisconsin Supreme Court issued a temporary injunction against the Milwaukee plan. But the governors and legislators of Wisconsin and Ohio deserve hearty applause from those who believe, as we do, that no child should be forced to attend a bad public school against his and his parents' will when a better school—public, private, or

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hybrid—is available close by. Because the families of poor children often lack the wherewithal to exercise such a choice on their own, it is the obligation of elected officials to make it possible for them, as they have historically done in higher education. That this will now happen in two major U.S. cities is a development of immense significance to American education.

A number of other states stepped up to the "choice" plate in 1995 but struck out. In Texas, Pennsylvania, Connecticut, Illinois, and Arizona, variations on the voucher theme failed to pass, and New Jersey delayed consideration of Mayor Bret Schundler's Jersey City plan until at least autumn of this year. The original Ohio choice bill, to encompass a broader area than Cleveland, was chopped down by the legislature. Another setback was the ruling by Puerto Rico's Supreme Court that the voucher program there violated the commonwealth's constitution.

CONTRACT MANAGEMENT OF PUBLIC SCHOOLS HOLDS CONSIDERABLE PROMISE; CONTINUED TRIALS SHOULD BE ENCOURAGED.

Nothing, of course, elicits tougher opposition from defenders of the public-school status quo than voucher schemes (and similar ventures that go by different names), even when such plans are aimed precisely at those disadvantaged children who are most likely to drop out of public school. But the idea is not going away. Meanwhile, privately-funded voucher projects also continue to multiply, from New York's Student/Sponsor Partnership, to the Golden Rule program launched in Indianapolis in 1991. Today 23 programs reach more than 10,000 students.

We believe that it is just a matter of time before children from needy families in most parts of the country will be able to carry their vouchers (or scholarships or whatever they may be called) to any accredited school. We understand that some private schools fear government regulation, and may decline to participate. We recognize that public aid should be targeted toward those students in greatest need (as is now the case in higher education); and we acknowledge that the Supreme Court will have to sort through the constitutional questions posed by inclusion of parochial schools. (Recent Supreme Court decisions in this domain have encouraged voucher supporters.)

Still, it must be noted that, in the meantime, primary and secondary schooling is becoming increasingly anomalous as vouchers come to prevail in most other domains of U.S. domestic policy. Even President Clinton has endorsed vouchers in job training and in public housing. Moreover, much of the rest of the world—from Australia to Chile to the Netherlands—treats publicly-subsidized private-school attendance as routine and normal.

Contract Management

Paul Hill's superb new book *Reinventing Public Education* sets forth a comprehensive vision of how this approach could work in the future—and why it is apt to work better than direct operation of all schools by the school system's central office. Meanwhile, Educational Alternatives, Inc. (EAI) continues to manage a number of schools in Baltimore and recently added Hartford, Connecticut, to its portfolio. The superintendent of schools in the District of Columbia has tried to revive his plan to engage EAI to run some of D.C.'s troubled schools. A private management firm is functioning as "superintendent of schools" in Minneapolis.

The Edison Project opened its first four schools in 1995, with others due to follow if these succeed. And at least two other companies are already active in this field in the United States. Sabis is an international group that has been running a school in Minnesota and recently added a second (charter) school in Springfield, Massachusetts. Nashville-based Alternative Public School Strategies has reached an agreement with little Wilkinsburg, Pennsylvania, to run one of three elementary schools in that community—a school in which 78 percent of students receive free or reduced-price lunches. (The future of this contract, however, is shadowed by ambiguity in the laws of Pennsylvania as to the legality of such an arrangement.) More companies and communities will surely follow, probably including big corporate guns such as Disney, which is creating a school in Florida that many view as a prototype.

Unfortunately, not all the blossoms in this garden are healthy. EAI's relationship with a school in Dade County, Florida, has ended. Baltimore mayor Kurt Schmoke—whose strong support is the main reason EAI has been able to withstand intense establishment pressure in that city—has voiced dissatisfaction with student performance in the EAI-run schools after three years and has suggested that the arrangement may need to be rethought. And EAI's bold plan to alter budget priorities in Hartford kicked up such a storm from vested interests—imagine shifting funds from surplus staff to areas such as technology—that the company and school board have decided to scale back most of the changes, at least for now, from the entire district to six schools that have "volunteered" for the full treatment.

The difficulties of EAI in Baltimore and Hartford suggest that contracting will probably work best with new schools and with existing schools that are receptive. It is difficult to graft a new management program onto a school whose staff is determined to defeat the new managers. Perhaps private management should begin with a single school or manageable number of schools that want to be changed. Otherwise, the new managers will be forced to maintain all the elements of a system that currently does not work for children. And if they do, they will be doomed to fail.

As for Edison, there is incredible pressure on its first four schools to be nearly perfect—educationally, organizationally, and budgetarily—from the very outset. The

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venture's future hinges on how well it meets these immense expectations. Every education journalist and researcher in the Western world is knocking on the Edison schools' door, probing for defects or missteps. No conventionally-run public school in America is likely to be subjected to the same degree of scrutiny or held to the same standards of perfection.

In our view, contract management of public schools holds considerable promise, and these trials should be encouraged. We should also expect bumps along the road as these schools get their bearings; some may even fail. It is well to bear in mind, however, that we currently keep failing public schools open and even reward them when they should be closed down. Therefore, when a poorly run contract school or charter school is terminated, we should see such an action as a victory rather than a setback for the reinvention strategy. If and when that happens, it will prove that school authorities are willing to be held accountable for poor results.

Meanwhile, beware the word "privatization," which is widely used by supporters of the current system to block all movement toward contract management. True "privatization" means selling or otherwise transferring a public asset to private owners who henceforth bear sole responsibility for its existence and are accountable to no one save their shareholders.

That is what is happening to certain big, state-run factories in Eastern Europe, for example, but it is not what firms such as EAI and Edison are doing with the U.S. schools they manage under contract. Those schools remain public in every sense that a student, parent, taxpayer, or voter could think important: They are open to the public, financed by the public, and educationally and fiscally accountable to public authorities for their continued existence (and for the retention or termination of their private managers). Here is a sure test of whether an organization has been privatized: If public authorities can cancel the contract or withdraw the charter, the transaction is not privatization. It is a management contract on behalf of the public, not a transfer of public goods to private ownership.

Governance Changes

The century-old governance structure of American public education is showing signs of change. As a recent *Education Week* headline put it, "Fervor spreads to overhaul state agencies."

This year, it appears, 30 states carried out or at least considered reorganization or reduction of their education departments, mirroring the popular political trends of reducing government, pushing authority to local officials, and giving power to the elected officials whom the voters are apt to hold responsible at the polls for the effective use of their tax dollars. (Education spending is the largest or second-largest budget item in every state.)

Texas offers a dramatic example. Now the second most populous state, Texas has been long known to have perhaps the most highly regulated school system in the country, with an immensely detailed education code and an all-powerful state education agency. Early this year, the legislature agreed with Governor George W. Bush Jr. that significant changes were needed. In effect, they repealed the entire education code and started afresh.

The authority of the Texas Education Agency has been limited to six basic functions, including recommending education goals, granting campus charters, managing school funds, and administering federal programs. Several new categories of schools and school systems have been authorized, including "home rule" districts that are freed from most state mandates and charter schools that may be organized by individuals or groups outside the existing school system. (Unfortunately, as we noted earlier, almost all Texas charters must be issued by the local school board, and these boards are not likely to welcome dissenting approaches.) Texas also created a new network of alternative schools and made it easier to remove disruptive students from regular classrooms. And it created a powerful new state board for educator certification, to be named by the governor.

Other states have taken different approaches. Minnesota abolished its department of education and merged these functions into a new department of children, families, and learning. Wisconsin took virtually all duties and powers away from its independently-elected state school superintendent, an office that was widely perceived as a captive of the education establishment, and turned them over to a new agency answerable to the governor. New Jersey's governor "froze" the regulatory process and directed the education commissioner and his colleagues to propose a comprehensive overhaul.

North Carolina—another highly centralized, heavily regulated state—is shrinking its department of education by half and rewriting laws and regulations to give local districts far greater flexibility. The state has established annual performance standards for the state's almost 2,000 public schools based on "reasonable progress" in reading, writing, and math and with various interventions, sanctions (including suspension of principals and teachers), and rewards for success or failure to meet those standards. In other words, the state is moving from a regulatory compliance strategy to one based on standards and results.

Illinois also made a radical change, though it affects only the city of Chicago, whose troubled and deficit-plagued schools have been the object of innumerable reform efforts in recent years. The legislature gave

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unprecedented control to the mayor, who has appointed (and can remove) all members of a small newly created "board of trustees" and a management team that includes a chief operating officer and fiscal, purchasing, and educational officers. The new law also places school principals in charge of all school employees (previously they had no authority over custodians) and authorizes them to set their own school hours and staff schedules. The Chicago Teachers Union is barred from bargaining over many nonsalary issues such as class size, staff assignments, academic calendar, hours and places of instruction, pupil assessment policies, privatizing services, and decisions over charter schools. It is also forbidden to strike for the next 18 months.

Will Unions Get with the Program?

Chicago is not the only place where teachers unions have run afoul of public authorities. Largely because of their efforts to block state and local reforms, the unions are coming under more intense scrutiny and challenge. School boards, legislatures, and governors are promulgating policies and proposing legislation to abolish tenure, redefine collective bargaining rights, repeal "fair-share" agreements, and otherwise change laws and practices that sustain union interests and undergird their power.

In Indiana, for example, the "fair share" law has been repealed. This law had authorized unions to extract fees from nonunion members in return for "services" performed for them by the unions, regardless of whether the individuals wanted those services. (An obvious example is a wage increase that affects all teachers in the district.) By repealing this law, the legislature made it illegal for unions to negotiate such arrangements with school districts. In another, more localized blow to the Indiana State Teachers Association, the legislature passed a reform bill for the Indianapolis schools that limits collective bargaining to the issue of wages only in that city.

In neighboring Michigan, the state also erased collective bargaining over certain nonsalary issues, empowered school boards to put teachers' health insurance out for competitive bidding (rather than compelling purchase of this benefit from the Michigan Education Association's insurance subsidiary), instituted steep fines against teachers who go on strike, and forbade the union to deduct political contributions from teachers' paychecks without their permission.

Such developments are apt to continue as long as unions throw sand in the reform gears. When education is reshaped around standards and performance rather than inputs and processes, just *about* every established routine will be affected, including personnel practices. No aspect of a school's management is more crucial to its effectiveness than how it handles staffing, and nothing is more fatal to performance-based innovation than attempts to preserve staffing rules that disregard performance.

In New York City, for example, the contract with the United Federation of Teachers allows a school, if 75 percent of the staff agrees, to be included in the "school-based option transfer plan," which lets it (among other union-rule waivers) select its own teachers rather than having staff assigned on the basis of seniority. Sixty schools, including most of the struggling new, small high schools, have opted to be included in the program.

In the city's 1,000 other public schools, however, which enroll 99 percent of the children in the system, transfers to vacancies continue to be based strictly on seniority. Junior teachers can be "bumped" by more senior teachers from other schools, no matter how much a school may want the junior teacher or how little it wants the more senior teacher. Such practices, of course, make it impossible for a school's staff to develop its own ethos, which is essential to the staff's effectiveness and its ability to work together as a team with shared goals.

The Educational Excellence Network has had a long history of successful association on important projects with the American Federation of Teachers at the national level, and the authors of this report admire AFT head Albert Shanker's defense of high standards and high stakes, his international work on behalf of democracy, and his good sense about curricula issues. His staff has also produced some terrific products, and several AFT locals have pioneered (or at least tolerated) some promising reform strategies.

At the state and local levels, however, far more often than not, the AFT and NEA are the most potent protectors of the status quo. In principle, they could change, abandoning their tired industrial model of unionism and turning to the flexible, responsibility- and accountability-seeking, participatory, professional approach to organizational behavior that modern organizations need, and that many other organizations have. We do not know whether, if only for self-preservation, they will prove willing and able to take such a step. We certainly hope they will.

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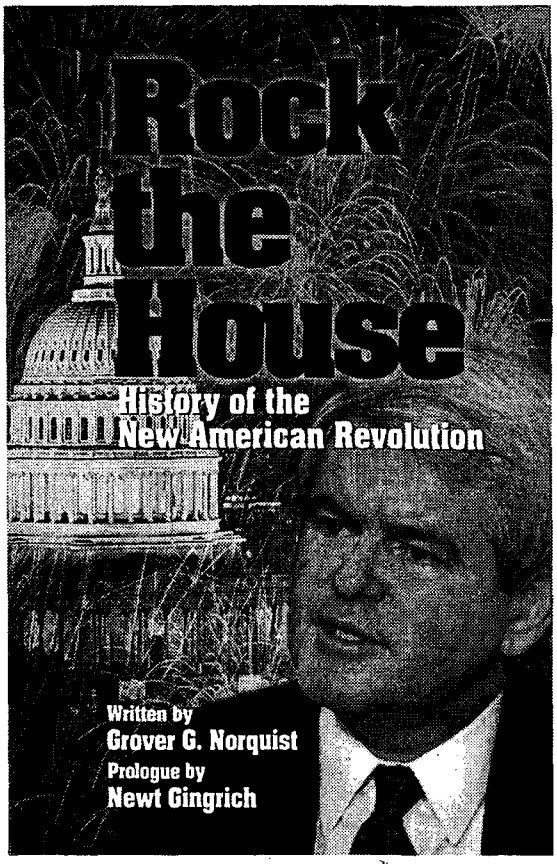

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(Education Optional)

David Sacks and Peter Thiel

Recent revelations in *U.S. News and World Report*'s annual college guide that the cost of a top undergraduate degree now exceeds $100,000 may represent a watershed. At more than $25,000 a year, many students and their families will have to think hard about whether an Ivy-League education is worth the expense. For some parents, the answer will be to send their capable child to a less prestigious university or college for about $50,000 less. Most parents, however, will decide to scrimp, save, and sacrifice—and perhaps take out a second mortgage on their home—rather than turn down that rare admission offer from a Harvard, Yale, Brown, or Duke.

By no means unrepresentative of what is meant by a "prestige" school is Stanford University, consistently ranked in the top five in *U.S. News*'s survey and privileged by an ideal climate, sumptuous facilities, and a $2-billion endowment. The yearly competition for admission reflects this status: More than 15,000 applicants vie for 1,600 places in the freshman class. A year there does not come cheaply: $25,749 for tuition, room, and board—about the cost of a new BMW 325i.

STANFORD'S ACTIVISTS HAVE LARGELY SUCCEEDED IN KILLING THE CORE HUMANITIES CURRICULUM.

For almost every year in the last two decades, Stanford's tuition increases have outpaced inflation and, more importantly, the rate of personal income growth in the United States. The increases primarily fund what Gerhard Casper, Stanford's president, has called a "mini-welfare state"—an ever-expanding range of student services and new programs centered around the university's multicultural "experiment." In the 1980s, then-president Donald Kennedy declared that Stanford's multicultural venture was "a bold experiment that must succeed," and the university began spending with a vengeance to make sure it did.

To administer its great experiment, Stanford employs nearly 7,000 staff—more than one bureaucrat for every undergraduate—including a $50,000-a-year "Multicultural Educator." (By contrast, there are only 1,400 faculty members.) And there is a large assortment of new multicultural departments (feminist studies, African-American studies, Chicano studies, Asian-American studies, Native-American studies), ethnic centers, "residential education" (which receives more than $3 million a year), and new classes and conferences. In 1991, the university established an Office for Multicultural Development as a cabinet-level department and invested it with sweeping powers to ensure the university's "transformation."

You can't achieve transformation on the cheap. Stanford raised tuition by 5 percent this year, 7.5 percent a year ago, and a whopping 9.5 percent for the 1992-93 school year. A record two-thirds of undergraduates (and an even higher percentage of graduate students) now receive some form of financial aid. However generous this aid, the squeeze invariably falls on parents or the students themselves. And much of it is unnecessary: Last year, the *Stanford Review* examined the 1993-94 university budget for ways to cut costs and reduce tuition. The *Review* identified $10 million in savings by merging scaled-back gender- and race-studies departments with other programs. The paper saved an additional $1 million by eliminating "multicultural dorm programming." All told, the *Review* produced a plan to reduce Stanford's tuition by about 14 percent by trimming multicultural programs.

It would be welcome. Explains Patrick Callahan, executive director of the California Higher Education Policy Center, "There is close to a middle-class panic in this country from increases in tuition by private and public institutions."

Such fear is hardly overblown. In the trendy world of academia, which covets the latest politically correct program like a shiny new hood ornament, there is competi-

David Sacks and Peter Thiel *are the authors of* The Diversity Myth: "Multiculturalism" and the Politics of Intolerance at Stanford, *to be published this fall by the Independent Institute, in Oakland, California.*

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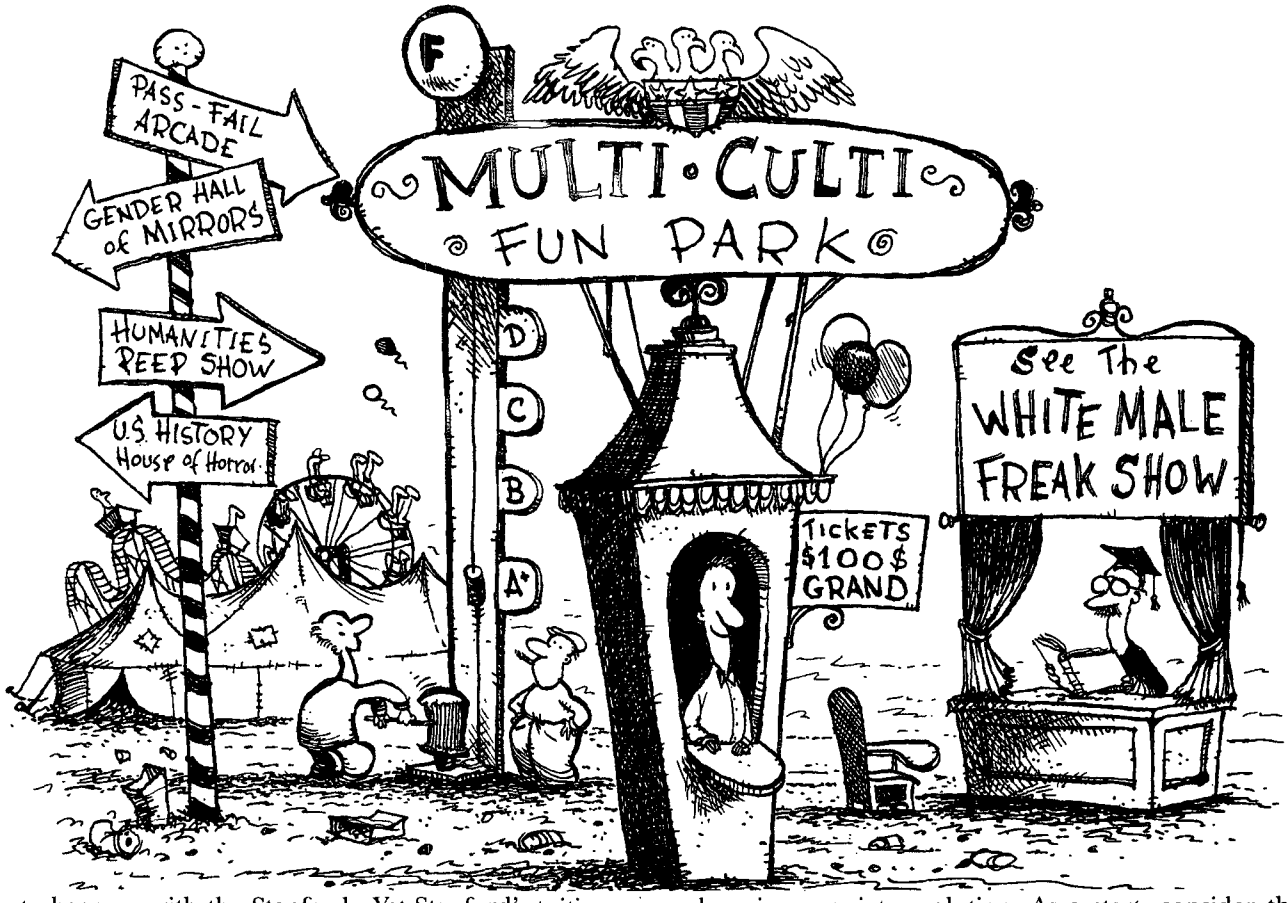

Illustration by David Clark

tion to keep up with the Stanfords. Yet Stanford's tuition ranks only 41st of 106 private colleges and universities surveyed by Cambridge Associates.

Many parents may be shocked to learn that the extra expense has not increased the quality of a undergraduate degree at Stanford, but rather has undermined it. Students can still receive first-rate training in engineering, the sciences, and economics, where results are more testable. But many humanities and social science students will find themselves awash in courses that trivialize logical thinking and seem incapable of taking history, ideas, or truth seriously.

The curriculum boasts of literature courses that filter Shakespeare through the lens of lesbianism, American history courses that find no time to teach about the Constitution, English classes that require students to write grant proposals for environmental groups, and psychology courses that give high marks for finding "gender discrepancies" in pizza parlors. In short, much of the undergraduate humanities curricula has been transformed into a vehicle for shameless politicization and indoctrination. Parents of these youngsters may begin to wonder why they didn't just keep the money and open up their very own McDonald's franchise.

The New Classics

With the now-notorious chant "hey hey, ho ho, Western Culture's got to go," Stanford's activists demanded in 1987 that the core reading list be dumped in order to make room for a new curriculum. Ever since the university capitulated to these demands, the humanities have been undergoing a quiet revolution. As a start, consider the multiple-track "Cultures, Ideas, and Values" (CIV) program, the relativist 15-unit requirement (about $8,000 per student) that replaced the Western Culture core:

- Required reading in the Philosophy CIV track includes works by Chief Seattle—the 19th-century Indian leader whose alleged writings were later judged to be just of a pale face. Although the instructors have retained Plato and Aristotle, they primarily use them to contrast the "logocentrism" of Western philosophers with the more holistic approach of Australian Aborigines (whose unwritten "philosophy" is explained by Western anthropologists). One of the class's feminist instructors, Carol Delaney, teaches that the American role in World War II is "phallocentric" because men invented the atomic bomb without women. She compares the Manhattan Project to Frankenstein, both evil attempts to thwart women's role in the reproductive process.
- The Bible is still read in all the CIV tracks, but many classes teach that Genesis is rife with sexism, and some sections even make the Apostle Paul politically correct by saying he may have been homosexual. Shakespeare is also still studied in all the tracks, but *The Tempest* is now viewed from a "slave perspective" and is made to serve as a case study in Western imperialism.

Although CIV is perhaps the single biggest waste of student tuition, it represents just the tip of the scandal. Multiculturalism has overrun most of the major humanities and social-sciences departments. The cumulative effect has been a kind of institutionalized silliness. Consider just some of the more blatant examples:

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• "Black Hair as Culture and History," one of the new multicultural history seminars, addressed how black hair "has interacted with the black presence in this country, and how it has played a role in the evolution of black society." Lectures included "The Rise of the Afro" and "Fade-O-Rama, Braiding and Dreadlocks," and local hair stylists were brought in for a week of discussions. Enrolled students viewed the 1960s musical *Hair* and read the lyrics to Michael Jackson's hit single "Man in the Mirror." "I couldn't have taught this class 10 years ago," Kennell Jackson explains. "But people don't look at me like I'm crazy anymore. What history does has broadened considerably."

• History 267, "The History of Rights in the United States," was so busy extolling 1960s protest ("rights") movements that the class never even studied the Declaration of Independence or the Constitution.

• "19th-Century American History," taught by Estelle Freedman, devoted half of class time to a study of women, because they had constituted half the U.S. population during that time. As a result of these priorities, the class did not have enough time to learn about the War of 1812.

• "Religions in America," a religious-studies class that can satisfy three different graduation requirements, devoted whole lectures to Shamanism, the peyote cult, and the Kodiak sect, but not one to the Catholic Church. When discussed at all, Christianity was viewed from a feminist or gay "perspective" through such works as *Jesus Acted Up: A Gay and Lesbian Manifesto, A Second Coming Out,* and *Beyond the Father: Towards a Philosophy of Women's Liberation.*

• Anthropology 1 (which can also fulfill three different graduation requirements) devoted lectures to "language imperialism" and criticized CNN for the phenomenon because the network broadcasts in English to non-English-speaking countries.

• In Psychology 167D, students received academic credit for becoming "contraceptive peer counselors" and for demonstrating these skills by placing condoms on a plastic penis at dorm meetings.

MULTICULTURALISM HAS OVERRUN ALL MAJOR HUMANITIES DEPARTMENTS. THE EFFECT HAS BEEN INSTITUTIONALIZED SILLINESS.

• In Stanford's mandatory freshman English classes, students are required to write grant proposals for their professors' favorite community-service agencies, including homeless advocacy projects, AIDS support groups, and environmental action leagues. Instead of focusing on reading and writing skills, these classes revolve around the "Community Service Writing Project," which assigns freshmen to such activities as answering telephones at Stanford's Center for Public Service and visiting East Palo Alto elementary schools.

• Enrolling more than 100 students each quarter, Linguistics 73 is one of the most heavily subscribed courses fulfilling Stanford's new race-studies requirement. Entitled "African-American Vernacular English," the premise of the class is that inner-city slang (of the type heard in rap songs) is a legitimate dialect of the English language deserving scholarly attention.

• "Interdisciplinary" courses provide the opportunity for politicization along several vectors. One example is "Peace Studies," taught by faculty from the departments of sociology, political science, psychology, history, and education. The class begins by defining "peace" as "collaborative well-being," a euphemism for a smorgasbord of the lecturers' pet policy choices—nationalized health care, government-guaranteed employment, transfer payments to inner cities, radical feminism, and so forth—all taught under the rubric of "peace." Meanwhile, the curriculum completely omitted the study of the origins of World War I, World War II, the War for Independence, or any other significant historical conflagrations. The Vietnam War and Gulf War were reviewed briefly, but only as they related to the "peace movement" and its (often unpacific) protests. The class's final lecture was entitled "Peace and You," in which the course's lecturers fondly recounted their own 1960s activism and exhorted students to join the "peace movement" and "to act responsibly and effectively on behalf of peace."

• Comparative Literature 189, "Representing Sappho: the Literature of Lesbianism," sought, in the words of Terry Castle, "to resexualize lesbian history." Shakespeare's *As You Like It* was identified as a "*locus classicus* of lesbianism," and the remainder of the course readings—books both new and old—were probed for "male and female representations of lesbian desire" and for "lesbianism as 'symbolist,' 'decadent,' 'modernist,' and 'utopian' literary motif."

Other courses addressing human sexuality:

• Feminist Studies 295, "How Tasty Were My French Sisters"; Comparative Literature 110, "The Politics of Desire: Representations of Gay and Lesbian Sexuality"; and Law 587, "The History and Politics of Sexual Orientation: Cross-Disciplinary Perspectives."

• "Representing Sexualities: Whitman to AIDS" (English 187D) is another of Stanford's X-rated English classes. The course syllabus warns that "sexually explicit materials, both hetero- and homoerotic, may be viewed and discussed in this class." Readings included articles entitled "A Posttranssexual Manifesto," "Capitalism and Gay Identity," "From Thoreau to Queer Politics," and "How to Bring Your Kids up Gay," in addition to two videos, "Voices from the Front," by the militant homosexual group ACT-UP, and "Tongues Untied," a pornographic gay film. Jay Grossman spent his first class session presenting an episode of the television comedy *Cheers* and then deconstructing the show as "homophobic." His first reading assignment was several weeks of a cartoon strip in which a teenage character reveals that he is gay. In Stanford's English department, if the material is trendy enough, it

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does not even have to be literature.

• Psychology 116, "The Psychology of Gender," is based on the premise that gender discrimination is everywhere, and so, not surprisingly, the class tends to find it everywhere. In her Spring 1994 class, Laura Carstenson required students to complete a group research project. Her favorite project was entitled "Gender Discrepancies in Pizza Consumption." The student authors first conducted their laborious research by "observing couples eating at a local pizza restaurant and recording the number of slices each individual consumed," and concluded that "gender discrepancies exist not only in quantity, but also in rate of consumption." Because this class meets the new feminist-studies requirement, it is heavily enrolled each quarter; hundreds of students are enlisted in this kind of inane multicultural research.

STANFORD STUDENTS FACE POWERFUL INCENTIVES TO TAKE MULTICULTURAL ELECTIVES. THE AVERAGE GRADE IS ABOVE AN A–.

Such anecdotes do not simply exist on the fringes of an otherwise terrific Stanford education. Many involve core classes that fulfill graduation requirements, subjects at the heart of a liberal-arts education. All students must take CIV and Freshman English. In addition, the university has imposed a number of "distribution requirements" (DRs) which can only be fulfilled by classes in certain areas. While there is no requirement in American History, for instance, all students—including science majors—are now required to take at least one course in feminist studies, one course on race theory, and one course on Third World cultures. There are three additional social-studies requirements, usually satisfied by classes from such departments as anthropology, English, and sociology where the multicultural revolution has been pushed furthest. "Psychology of Gender," "African-American Vernacular English," Anthropology 1, and "Religions in America" are all classes that fulfill DRs.

The DR system limits the flexibility of conscientious students who wish to avoid swallowing large quantities of academic junk food. Of the 180 units necessary for graduation, distribution requirements in new or revamped subjects like CIV, Freshman English, race studies, feminist studies, and multicultural social studies now constitute almost 60 units. As a result, even those students who pursue majors in economics, physics, chemistry, biology, mathematics, or engineering will spend close to one-third of their four years at Stanford—at a cost of about $25,000 per year—studying thoroughly politicized multicultural requirements.

Just in case these requirements do not suffice, however, Stanford's multiculturalists provide powerful incentives to take their electives. The average grade in Stanford's humanities departments is above an A-. Many of the most radical multiculturalists are also radical egalitarians who give everyone As, so from a student's point of view their classes are not necessarily the ones to avoid. What student wouldn't be attracted to a class like Peace Studies, where a "take-home" midterm and an "open-book" final exam guarantee an easy A? Science majors are particularly prone to building "trophy transcripts" by taking multicultural courses whenever possible, because they face the stiffest competition in admission to graduate programs and medical schools.

For those students pursuing a degree in the humanities or social sciences, there are even fewer options. The numerous examples already mentioned—all fairly indicative—represent just the beginning of an indoctrination into New Age thinking. For these hapless students, being principled or conscientious about course selection simply does not make much difference: Instead of "Black Hair" or Feminist Studies 101, such a student might find himself in "19th-Century American History" or "History of Rights," where the course title falsely advertises the subject matter. While there are, of course, still many solid courses (and good teachers) at Stanford, especially in engineering and the hard sciences, Stanford's activists have largely succeeded in killing the core undergraduate humanities curriculum.

The Multicultural Waste Land

The death of the humanities at Stanford does not imply that institutions like it will serve no function whatsoever. In the hard sciences, economics, and engineering, our top colleges and universities will graduate people who have amassed an impressive array of scientific knowledge and technical skills. At the same time, business, law, and medical schools will continue to churn out trained professionals. From the outside perspective of companies seeking to hire new computer engineers, biochemists, or investment bankers, everything will continue as before.

But in the process, Stanford risks becoming a technical school, along the lines of MIT or Caltech—highly esteemed in narrow areas of expertise and not much more. Behind the facade of normalcy, much may be lost. The university may be transformed into a multiversity, no longer capable of providing a universal framework for students to integrate a wide assortment of knowledge into a coherent whole. That kind of framework, so essential for thinking about the larger problems facing individuals and societies, simply cannot be provided by science; it must be gleaned from the humanities, and can be reached only after rigorous study—in philosophy, literature, and history.

Most students have only the vaguest notion of what some of the alternatives might be—what Socrates, Jesus, or Jefferson said that might be relevant to the contemporary situation. They have only a minimal understanding even of the ideas that built the American regime. Most have not read John Locke or Adam Smith, much less *The*

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Federalist Papers, Alexis de Tocqueville, or Abraham Lincoln. Though the loss of this framework cannot readily be translated into dollars and cents, it will be felt keenly nonetheless, by a generation of students increasingly alienated from an incoherent and senseless world, unable even to diagnose the source of their troubles.

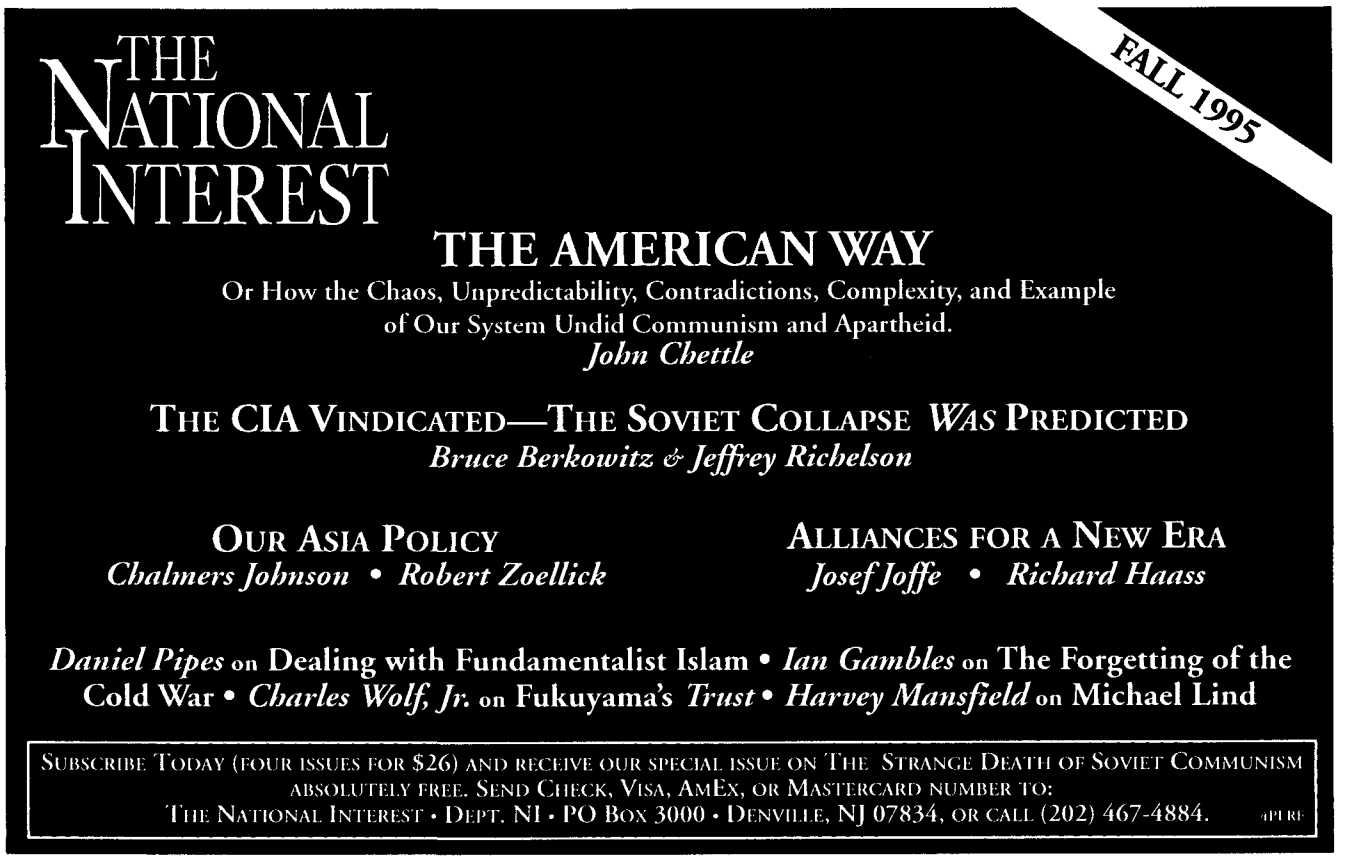
The scope of this loss has been hinted at, indirectly, by one of Casper's most sweeping proposals. He has suggested replacing the four-year undergraduate degree with a three-year degree. His proposal is particularly heretical, because it suggests that students are not getting much added value out of a fourth year at Stanford and that the university's distribution requirements might need to be scrapped. "If resources were available, I'd say four years are wonderful, the more the better," he says. "On a cost-benefit analysis, there will be more questions as to whether these four years are sustainable in the long run."

In a narrow sense, Casper was clearly right: If there was no real humanities program left, then a three-year professional education would represent a sensible change. At the same time, however, the call for such a drastic remedy indicated how much had been lost and how little else could be done about this loss.

If higher education in America is not altogether finished, then perhaps it is in the midst of a massive and unprecedented displacement. An intellectual renaissance in our traditional centers of higher learning may be a long time coming, but this does not necessarily imply that people simply will stop thinking in the intervening years. To the extent that it continues, intellectual life will likely shift from elite universities to historically less significant colleges that have survived the multicultural transformation, or move altogether outside the academic context.

New educational venues may arise and meet demands no longer being satisfied by existing institutions. One promising area involves new computer networks in which people connect with one another from all parts of the country to discuss matters of common interest. Not surprisingly, a number of these networks focus on areas that no longer have much of a place in the multicultural academy, such as free-market economics or Thomistic theology. Because learning need not take place in the classroom, this sort of technological breakthrough may in time undermine the near-monopoly on higher education currently enjoyed by America's elite universities.

Admittedly, that distant prospect offers small solace to students who are eager to attend prestigious schools like Stanford, but are hard pressed to find there academic mentors to guide them toward answers to ancient and modern questions: What constitutes justice, rather than political propaganda about the size of welfare payments; what the Bible teaches about man's political nature, rather than radical speculation about the Apostle Paul's sexual orientation; or the Founders' view of slavery and race relations, instead of courses on hairstyles. At $100,000 for a degree, is that really asking too much?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9. *Five Years of My Life (1894–1899),* ALFRED DREYFUS. McClure, Phillip & Co, New York, 1901. 1st American Edition. Not without some irony, the author is described as "Ex-Captain of Artillery in the French Army." A fine copy with gold gilt embossed titles. Scarce. $175.

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No Right to Do Wrong

The Rediscovery of American Citizenship

Larry Arnn

Citizenship has always been an important question in America, and sometimes it is urgent. This is such a time. In the nature of our society, we leave much to private action. We do this as a matter of principle, in the interest of the liberty that is our entitlement. In America, it is our nature and our law to recognize this natural liberty. That is why private action is unusually important here. But today, private action is not doing its job.

We know the facts. A third of all children are born out of wedlock. Half of marriages break up. Thievery and pillage, rape and murder flourish at horrific levels. Our graduates know neither basic facts nor main ideas. Most Americans are economically dependent on the government in some way. Our world is richer and more sophisticated, yet there is a decline of civility, of responsibility, and of knowledge about the highest things, giving our society a low, even primitive cast. Americans have the feeling that something more than their greatness may be going. They feel the loss of goodness, and the emptiness of that feeling cannot be borne.

The liberals have a plan to repair this loss. It is the centralized, bureaucratic, administrative state. Its language is familiar: It calls us to "attack our problems on a national scale," "with the full resources of our country," "with the best minds in the nation," all "coordinated from the top." It reminds us that "Washington has a responsibility"—for example, to keep children nourished. Liberalism finds its energy in utopian promise. Woodrow Wilson would "marry our interests to the state," as if we could be, in the literal sense, one grand family. Franklin Roosevelt would eliminate want, not just from the United States, but from the world. And he would eliminate fear while he was at it. Lyndon Johnson would guarantee equality of result. Hillary Clinton would "change what it means to be a human being in the 21st century."

Modern liberalism is progressive, visionary, and ever expanding, and has a conception of citizenship appropriate to its principles. The citizen under modern liberalism responds to policy. He knows that the progress to which society is destined requires progress by him, in his own person. He must be ready, when fashion shifts, to alter his pronouns, his diet, and his relations with his children. He must stay abreast of the shifting value placed on family, or patriotism, or history. He must, in short, be pliable, ready to be shaped and molded.

Liberals understand the importance of making their vision of citizenship compatible with, even necessary to, the old concept of citizenship that it replaces. When Bill Clinton was inaugurated, for example, he suddenly became "William Jefferson" Clinton. To emphasize the point that he is named after Thomas Jefferson, he spent the eve of his inauguration at Monticello, and traveled the same route that Jefferson did to arrive at the ceremony. He announced his tax increase on Lincoln's and Washington's official birthday, and spoke about their greatness and attention to duty.

President Clinton thus continues a tradition of successful modern liberalism begun by Woodrow Wilson and perfected by Franklin Roosevelt. Modern liberals know better than to reject openly the ideas of the Declaration of Independence. But they talk plenty about "completing them," which means changing them completely. Franklin Roosevelt, for example, invented a new demon—"the economic royalists"—to replace King George III. He claimed to be defending liberty, in the same way the Founders had defended it against the King.

But in fighting the economic royalists, Roosevelt attacked also the right to property, a fundamental right that the Founders took pains to establish. Because of this cleverness, the liberals are good at seeming public spirited and devoted to the old ideas. People have long trusted them to serve the community, to care about citizenship and neighborliness.

We conservatives are united in our opposition to the liberal idea of citizenship. We have seen that there is no liberty under this program. It extinguishes liberty by extinguishing the creature capable of liberty. By the force of government, it replaces him with some new being. It takes a lot of government to "change what it means to be a human being." Several million administrators, deploying a quarter of the largest economy on earth, do not seem to have finished the job in a full generation of trying.

If we conservatives do not like the liberal idea of citizenship, what do we like? There, more work is needed.

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Recall the standard list of the things wrong with our society, such as divorce and illegitimacy and crime. I would add one generally forgotten: a loss not only of habit, but of knowledge, a loss not only of the exercise of good citizenship, but of the ideas that underlie it. In short, we are ignorant of the basis of our government and the way that it should operate.

Working adults know that the government is too big and wastes their money and tells them lies on a regular basis. But very few people know or understand even the basic issues of contemporary politics. They do not know, for example, that the cuts proposed by the current Congress amount only to a small fraction of federal spending. They do not know that each of the Clinton budgets called for large increases in domestic spending. They do not know that the welfare system pays its typical clients more than $22,000 per year in southern California, nor that this is more than double the minimum wage.

THE RESTORATION OF THE PRIVATE REALM REQUIRES RECOVERING THE IDEAS THAT FORM THE BASIS OF OUR POLITICS.

This ignorance is neither surprising nor worrisome, except that it betokens a larger ignorance of the high purpose of and the strict limits on government in America. Because of this, we tend to work out our policies practically. We will devolve welfare to the states because "the federal system has proved that it does not work." We hardly mention that the only real entitlement is to the money we earn for ourselves, and that we have no right to anything earned by another. In this respect, we compare poorly to the generation of Americans who would not pay a tax on tea because they were not represented in the legislature that imposed it. These earlier Americans could tell you, right down to the law of nature and human equality, why that tax was wrong, and why another one might be right. They were schooled in the business of being citizens. That schooling made it possible for them to win their liberty.

Our statesmen—even those on the Right—do not do a sufficient job recovering this lost knowledge. None of our statesmen called the Clinton health-care plan unconstitutional. Few oppose entitlements root and branch. What are we to do?

The recent debate on Proposition 187, California's illegal-immigration initiative, suffered from this failure. Good people supported the initiative, and good people opposed it. The good people who supported the initiative, with a couple of important exceptions, did not make a case about the meaning of citizenship. They talked about denying these so-called benefits of citizenship to some who did not deserve them, without saying what most of them believe: Citizens do not deserve them, either. The good people who opposed the initiative talked a lot about equal treatment, and they said little or nothing about the beliefs and practices that constitute citizenship in America. We were left with a debate about a side issue, and the main point was lost in the whirlwind.

If statesmen cannot do the work, then we citizens—in private life—must do it. I would salute, for example, the conservative writings that support the regeneration of fatherhood, and the sanctity of the family, and the necessity for religion to become powerful once again in our public as well as in our private lives. It is vital to add, however, that our problems are deeply political, and their solution will require hard political action, based upon deep political reasoning and unyielding political conviction.

Although the Bureau of This or the Agency for That may not be the answer to the evils we face, we are still a profoundly political nation, and our public life is infused with political ideas. Take, for example, the recent celebration of "voluntary and local associations" as we find in the writings of Marvin Olasky or Russell Kirk or Speaker Newt Gingrich. We have turned back to Tocqueville, and we know now that American life until lately teemed with these associations and was elevated and ennobled by them. Of course we are right, in one sense, to think that these local institutions are not at all political. They have no formal constitutional place, they function apart from political action, and they exist in one form or another wherever societies are found.

Still, in America these local, prepolitical institutions had a special vitality. That vitality was nourished by the political institutions of the country. Now that those institutions have changed, the local institutions of America have diminished in strength. Major social-service charities are worried that, under block grants, they will not get as much money from the states as they have been receiving from the federal government. These same charities do not, as a rule, provide actual direct help to the poor. Rather they assist the federal government in providing those services. Here, then, are "local and voluntary institutions" that are not really local and not really voluntary. Their character has been altered by a change in national politics.

When local institutions thrived in America, they did so under the influence of a great principle at the heart of the nation's politics. According to this principle, we are equal in our rights, and not to be governed except by our consent. Our citizenship itself operates under this principle of equality, a principle announced in the first organic law of the United States. It is a principle not of local but of national scope, a principle authoritative not because it was adopted by a town or even by a country, but known to every man who is rational. In America, local and voluntary institutions operate beneath the shelter of high national principles.

Conservatives rightly think that religion should play a larger part on the public stage, for religion has been a vital component of American citizenship from the beginning. Tocqueville observed that "there is no country in the world where the Christian religion retains a greater influence over the souls of men than in America." Liberty is

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vital to religion, he wrote, and religion in turn is vital to liberty:

"Liberty regards religion as its companion in all its battles and its triumphs, as the cradle of its infancy and the divine source of its claims. It considers religion as the safeguard of morality, and morality is the best security of law and the surest pledge of the duration of freedom."

But it is important to learn from the Founders about how to speak of religion. The Founders were absolutely at ease with a civic acknowledgment of the Deity and its implication for citizenship. But they spoke in the language of reason as well as of revelation. The preachers of the Revolution spoke often and strongly about morality, both in public places and in their churches. In so doing, they addressed their countrymen not as parishioners simply, but also as fellow citizens. Take for example the words of Samuel West, a preacher and a member of the convention that wrote the Massachusetts Constitution of 1780:

"The most perfect freedom consists in obeying the dictates of right reason, and submitting to natural law. When a man goes beyond or contrary to the law of nature and reason, he becomes the slave of base passions and vile lusts; he introduces confusion and disorder into society, and brings misery and destruction upon himself. This, therefore, cannot be called a state of freedom, but a state of the vilest slavery and the most dreadful bondage. The servants of sin and corruption are subjected to the worst kind of tyranny in the universe. Hence we conclude that where licentiousness begins, liberty ends."

If we wish to emulate our Founders in our efforts to restore religion to the public square, we must do it in this way. This way is stronger than the appeal many religious conservatives put in its place today. It is stronger because it makes its claims upon an argument and evidence that applies to all, and not only those who are blessed with faith in the person of their Maker. While it supports that faith, and lays the ground for it, this way begins with reason, the faculty that perceives the natural law—the basis of citizenship in our Founding.

The Founders were also conscious of the limitations citizenship places on religion. Consider the words of George Washington in a letter to the Hebrew Congregation of Newport, Rhode Island:

"It is now no more that toleration is spoken of as if it was by the indulgence of one class of people that another enjoyed the exercise of their inherent natural rights, for, happily, the Government of the United States, which gives to bigotry no sanction, to persecution no assistance, requires only that they who live under its protection should demean themselves as good citizens in giving it on all occasions their effectual support."

Religious liberty, Washington argued, is central to the American conception of citizenship. American citizenship is open to people of any faith or creed. Liberty—the freedom to use one's property, to pray to one's God, to speak one's mind—sets a limit upon politics that is inviolable.

At the same time, the basis of liberty sets a limit upon something more than politics. It sets a limit also upon what properly may be called religion. Religion is free in America from all oppression, and yet those who practice it must live under a political guideline. They must "demean themselves as good citizens." Nor is this standard simply a negative or passive requirement. Citizens must give their country "on all occasions their effectual support."

Citizenship, then, provides a standard against which religion itself must be measured. True enough, citizens may be exempted from military service if their religion requires it, yet the rules of justice that underlie citizenship can be enforced even in the face of a claim of religious protection. If, for example, the Davidians at Waco *had* been abusing their children, even if they were doing so in the name of God, then the use of force to extract those children would have been justified.

One "cannot say that people have a right to do wrong," said Abraham Lincoln, that great student of the Declaration and the Founders. If we know what is right, then we may with justice require right from others under the law. We may with justice expect a man who pledges his faith to a woman to keep that faith, a man who fathers a child to provide for that child, a man who is a citizen to fight for his country. The country is on the side of the citizen who does his duty. It belongs to that citizen; he and his fellows are sovereign in it. In return for their liberty, which the government does not give them but helps them to protect, they have obligations that they are bound to discharge.

I have described the attentive and pliable citizen who is the hallmark and aim of the modern, liberal regime. Another kind of citizen is implied in the heritage that comes to us from our forefathers. This is a citizenship that responds to the bidding of the natural law and human equality. Americans take up more space, speak more directly, and stand their ground more assertively than people in most other places. An American is more likely to start a business, to give to charity, and to care for his community.

Such a citizen has been shaped by hammer blows and the sting of the sword. These were the blows of the American Revolution and the wars that have come since. They were fought in the name of a faith and a creed that applies to all and is at the same time special to us. Winston Churchill, the son of an American mother, regarded the American people as the new great people of the earth, standing beside the Greeks and the Romans and the British among the leaders of mankind. When he cited the great documents that have secured the liberties of the English-speaking peoples, he did it on the Fourth of July. He named the Declaration of Independence as the greatest of them all, knowing full well that it covered all men, whatever tongue they spoke.

If private action is to do its job again in our country, it must not be seen as a private realm alone. Uniquely in our country, the rules that guide a private citizen, as he cares for his family, and works at his job, and serves his community, are the same rules that inspire the form and purpose of government. For that reason, the restoration of the private realm to its full vitality and decency requires the recovery of the ideas that form the basis for our politics. We must once again hold certain truths to be self-evident. We must meet the challenge that those truths lay before us.

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Cross Purposes

Will Conservative Welfare Reform Corrupt Religious Charities?

Amy L. Sherman

Welfare reform, says Governor John Engler of Michigan, is not "just about reforming a broken system, but about reforming what is broken in the human character." Engler is one of a growing number of policymakers who seek to shift responsibility for helping the poor from government bureaucracies to civil institutions—particularly religious ones—that can address the underlying moral and cultural aspects of chronic welfare dependency. Indeed, amidst the flurry of federal and state initiatives to scale back the welfare state, religious nonprofits are becoming the new provider of choice for funding and delivering social programs.

Engler has approved a multimillion-dollar contract with the Salvation Army to care for the state's homeless population. Mississippi governor Kirk Fordice has established a "Faith and Families" project in which state social-service agencies work with churches to "adopt" welfare families. The federal government provides some 350 grant programs for social-service nonprofits, many of them with religious roots. U.S. Senators John Ashcroft and Dan Coats have proposed legislation allowing individuals a dollar-for-dollar tax credit for donations made to charities, including religious groups, that serve the poor.

The enthusiasm for religion-based providers is well-deserved. Christian-based substance-abuse recovery programs, for example, reportedly boast a 70 to 80 percent success rate, whereas secular therapeutic programs report an average success rate of 6 to 10 percent. Research by Roger Freeman of Harvard University shows that black inner-city youth who attend church are 47 percent less likely to drop out of school, 54 percent less likely to use drugs, and 50 percent less likely to engage in criminal activities than those without religious values. Columnist William Raspberry of the *Washington Post* recently asserted that the most successful social programs "are those that are driven—even if only tacitly—by moral or religious values."

So it's beginning to look like the secular state wants some old-time religion. But what impact will increased state funding have on religion-based programs? Will more money allow them to help more needy people, or will it dilute—or pollute—their ability to exert the moral and spiritual influence that makes them uniquely successful?

In Michigan, where Engler has aggressively collaborated with religious nonprofits, the results are mixed. State agencies tend to treat these nonprofits not as equals, but as subcontracting functionaries doing the government's bidding. State contracts almost always come with conditions—regulations that sometimes diminish a religious group's best assets: its personal involvement, its credibility with the community, and its commitment to addressing not only physical needs but spiritual ones as well

Moreover, religious nonprofits that contract with the state may, as a result, shift their purpose from the transformation of lives to the mere delivery of services. The most effective groups challenge those who embrace faith to live out its moral implications in every significant area of their lives, from breaking drug addictions and repairing family relationships to recommitting themselves to the value of honest work. But state social-service contracts aren't necessarily concerned with such outcomes; they focus on meals served, beds available, and checks cashed.

Engler Calls in the Army

The aim of his welfare-reform efforts, Engler says, is to smash the entitlement mentality, promote the idea that aid entails responsibility, and empower the private sector (particularly the religious community) to deliver welfare services. To accomplish the first two goals, Michigan in 1992 began requiring recipients of Aid to Families with Dependent Children (AFDC) to sign a "social contract" with the state that committed them to work, job training, or volunteer service for at least 20 hours per week. To accomplish the third goal, Engler has increased collaboration with and funding of religiously based social-service groups.

Some public-private partnerships in the state are still too young to afford solid conclusions about their effects. Nonetheless, the most formal and visible partnership in social welfare in Michigan—the state's annual $9.5 million contract with the Salvation Army to assist the homeless—sheds some light on the deficiencies of public-private collaboration.

In December 1991, the Michigan Department of Social Services (DSS) awarded the Salvation Army a $3 million

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grant to provide emergency shelter and two meals per day to homeless individuals, either in its own facilities or by "subcontracting" with other private shelter operators. The partnership resulted from the expectation that homelessness would increase following Engler's most dramatic welfare reform: terminating the state's General Assistance (GA) program. Until October 1991, the GA program had provided about $240 million annually to childless, able-bodied, nonworking adults. Critics charged that without assistance, many of these individuals would become homeless. State officials wanted an inexpensive but effective initiative to prepare for such a contingency.

The scale of this partnership is impressive. In the first year, the Army provided over 680,000 "nights of service" (a bed and a meal) to the state's homeless. The initial grant of $3 million has increased each year to reach $9.5 million in 1995. This works out to $10 per day per client and allows the Army a modest administrative overhead of 3 percent. From the time GA was terminated until March of this year, the Army and its subcontractors provided nearly 2.9 million nights of service to homeless individuals.

From the state's perspective, this partnership has been, in the words of Rusty Hills, Engler's public-affairs director, "absolutely magnificent." In one fell swoop, Engler saved the taxpayers millions of dollars, dealt a significant blow to the entitlement culture, encouraged thousands of individuals to leave the dole and find jobs, and provided homeless people food and shelter far more cost-effectively than ever before. Despite the increase in homelessness that followed the GA cuts, state officials say, the Army and its subcontractors have risen to the challenge. Shirley Nowakowski, the director of energy, housing, and emergency programs for Michigan's DSS, says the Salvation Army partnership is a success because "everyone who wants a bed has a bed." Jerry Miller, the state's director of social services, agrees, noting that the Salvation Army is providing services far more cheaply than the state could.

Leonard Krugel, the Army's director of divisional services and the point man in the Army's contract with the state, is also pleased with the collaboration. He explains that the Army would have had to confront an increased homeless population anyway, and having state dollars helped pay the bills. More importantly, Krugel argues that the partnership has provided the Army "regulatory relief."

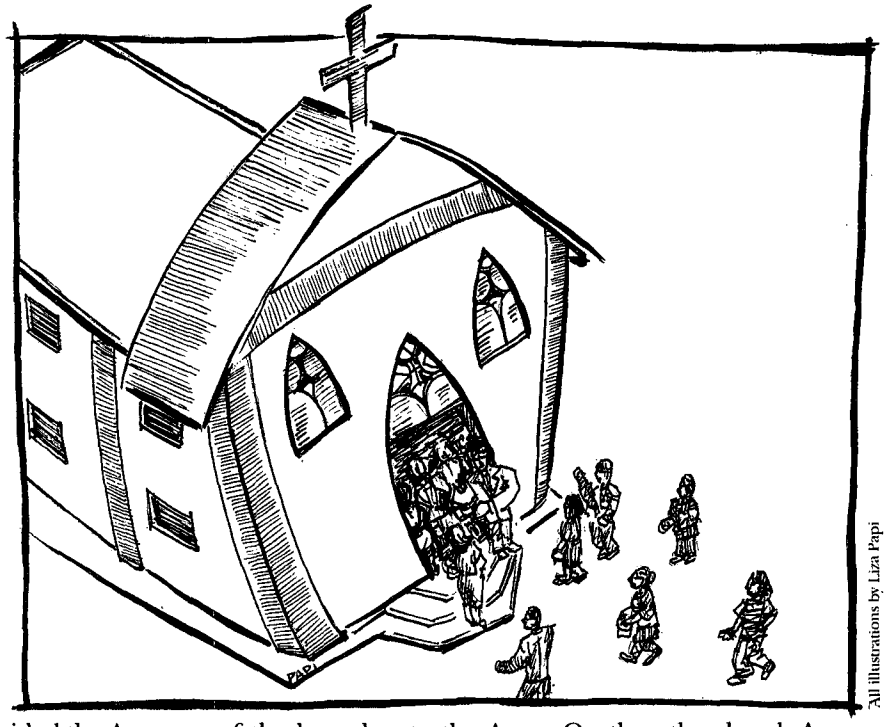
For example, city officials in Detroit recently passed a new ordinance requiring homeless shelters to provide, among other things, dietitian-approved menus, quiet study rooms for schoolchildren, and expensive fire-suppression sprinkler systems. The ordinance already has put some private shelter operators out of business, and critics say the regulations are excessive and unrealistic. But for the Army, Krugel explains, "all of [these regulations] are outside the sphere of this contract."

Just Send the Checks?

Former Army staffers and outside observers, however, are less sanguine about the partnership. The Army has a long history of providing emergency shelter. But it also knows a lot about how to help the homeless break the cycle of dependency. Salvation Army chapters in Michigan offer drug rehabilitation programs, educational services, and job-training seminars. Nearly every Army center has a chapel on site, and Bible study classes and spiritual support groups are common.

The state contract, however, is limited to emergency services only. It includes neither the practical nor spiritual functions that have distinguished the Army over the years. With state-supplied funds, the Army subcontracts with shelters and certifies that they meet minimum standards of health and safety and provide the basic services of food and shelter. The Army neither provides consulting services to the subcontracting shelters nor assists them in designing programs to serve the homeless. It simply acts as a conduit for state funds, distributing money to 116 shelters (including religion-based ones) throughout the state.

The contract represents an enormous missed opportunity. On the one hand, state officials seemed to focus nearly exclusively on the cost effectiveness of turning over care of the homeless to the Army. On the other hand, Army staffers failed to insist that their emphasis on moral renewal be implemented in participating shelters.



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"The Salvation Army has taken a very myopic approach to its role, that of being a fiduciary—not a program monitor, just a 'pass through,'" says Dan Piepszowski, the Army's former director of social services in eastern Michigan who is now with the Catholic Archdiocese of Detroit. "I don't think the Army was able to fully integrate their church ministry agenda into the operation of the contract." Piepszowski says, for example, that there has

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been no clear ministerial role for core officers—the heart of the Army's religious leadership—at the shelters.

"They've got to figure out who they are in this collaboration," Piepszowski says. "Do we want to send the checks or do we want to work our magic? They've opted to send the checks."

It appears that the Michigan DSS also had a too-limited vision of what it wanted out of the partnership. Leonard Krugel, for example, does not know why the state chose to work with the Army rather than some other entity. When asked the same question, Shirley Nowakowski of the DSS said that the state selected the Army because it has corporate offices in several Michigan counties. She seemed unaware that the Army, as a religion-based provider, might address moral and behavioral problems underlying chronic homelessness more effectively than typical secular programs. Neither did state welfare director Jerry Miller. He said the fact that the Army is a religious organization never entered his thinking. Rather, according to these officials, they wanted to ensure that every Michigan citizen who needed emergency shelter would get it—and they believed the Salvation Army could deliver.

Sam Chambers, the director of social services in Wayne County (which includes Detroit), complains that the state was never interested in a genuine partnership in which the Army could pursue its holistic approach to homelessness. "Case planning wasn't part of [the partnership]. Rebuilding people's lives wasn't part of it. . . . All that was bought by the state was direct emergency services—a 'cot and a hot.'" Critics say the Army's involvement is not helping Michigan transform homeless individuals into productive citizens, but is simply feeding and sheltering a dependent homeless population more efficiently. All that has changed, they maintain, is who signs the checks for the individual shelters.

The Dole and the Soul

The drawbacks of state funding go deeper than the loss to welfare recipients of the benefits of a spiritual ministry. The nonprofits themselves risk losing their unique capacity to help the needy. For example, a nonprofit's credibility in the eyes of its beneficiaries may be tainted by its association with state agencies. Rev. Eddie Edwards, who oversees a community-development organization in east Detroit called Joy of Jesus, explains: "When we are working with people in the community, helping them become self-sufficient, helping them get off welfare, it would be extremely difficult to tell them to get off welfare if we were on some kind of public assistance."

Other problems, though, exist largely because of the way public-private partnerships are now conducted. The impact of public funds on REACH, Inc., another church-based ministry in Michigan, illustrates several pitfalls into which such groups can stumble.

REACH began as the brainchild of several lay members of Detroit's 12th Street Baptist Church, who started an outreach to senior citizens in the surrounding neighborhood. The group established a day-care center, purchased and rehabilitated crack houses, and even opened up a local restaurant. Rev. Lee Earl pastored the church, and REACH's offices were housed in the church building. As the group's vision for community renewal expanded, some members wanted to pursue government funding. In its early years, church members and private companies had financed the ministry's work. Earl says he was not sure that "the benefits of government funding outweighed the challenges," but his was a minority voice.

In the early 1990s, the church won grants from the U.S. Department of Housing and Urban Development, the Small Business Administration, and the city government to expand its housing-redevelopment efforts and small-business training. But with the dollars came headaches. For one thing, bureaucratic sluggishness delayed their redevelopment program. Earl describes how government bureaucrats held up the processing of contracts because they lacked computer skills. "Their turnaround time might be a month and your turnaround might be a day," Earl says. "But you've got to move by their timetable."

Local government officials overseeing REACH's work also lacked "street sense," Earl says. When REACH rehabilitated homes with private money, it negotiated only with the city's building authority. "The building authority was flexible to the realities of rehabbing," he says. "For example, the houses have to have gutters and doors and other parts made of aluminum. But you can't put that stuff on until the house has people in it, because the crack heads will steal the aluminum and sell it for drugs." Building authorities typically approved the inspection as long as the materials were purchased and ready to be put on. Once the home was approved, the family could move in, and church volunteers put on the aluminum within 24 hours.

Once REACH received local, state, and federal funds, other agencies, including the community development department, assumed various responsibilities for oversight. According to Earl, the officials there did not understand the realities of rehabilitation in the inner-city. "They wanted [the aluminum] on the house before they would even come out and inspect it," Earl says. "They said, 'Put it on the house and we'll be out within seven working days.' Well, it wouldn't stay on the house for seven working hours!"

Up Close and Impersonal

One attraction of religion-based social-service groups is that they tend to be more personable than their secular counterparts. Workers in the religion-based providers often come from the local neighborhood and can relate well to clients. Moreover, ministry staff are often volunteers or are underpaid; they are there because they view their work as a calling rather than a job. Nearly everyone in social service agrees that a friendly, supportive environment stimulates improvements in behavior among welfare recipients. Consequently, the "impersonalization" or "bureaucratization" of a ministry can severely undercut its effectiveness.

The process of "impersonalization" unfolds in a variety of ways. Ministries complain that government funding brings enormous paperwork that steals time away from face-to-face ministry. In addition, government often dictates that groups receiving public funds hire only staffers with specific educational degrees, such as a masters of

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social work (M.S.W.), or with certification in professional substance-abuse counseling programs. Such "professionalization" can undermine the informal, relational style that once prevailed between staff and recipients of care.

"Part of the criticism of us now is that we're too professional, too polished; that we can't relate to the things that [local residents] are going through," says Linda Smith, a REACH staff member since its inception. In the organization's early years, says former executive director Charlene Johnson, about 70 to 100 volunteers participated in various aspects of the ministry. Today, REACH's office "volunteers" number three—all from the federally funded Americorps program. REACH's current director, Pamela Martin Turner, says the organization is "developing personnel policies, formalized job descriptions with job titles and salary ranges, and other things that happen when you become more bureaucratic."

Gary Bayer, who used to oversee a Detroit homeless shelter serving substance abusers, argues that ex-clients who have overcome their addictions make some of the best employees. They have walked the same streets as the drug abusers they now serve; they have the authority to challenge them, and teach them how to get off drugs and stay off them. But under the government's credentialing requirements, such "homegrown" leaders often aren't eligible for employment as counselors.

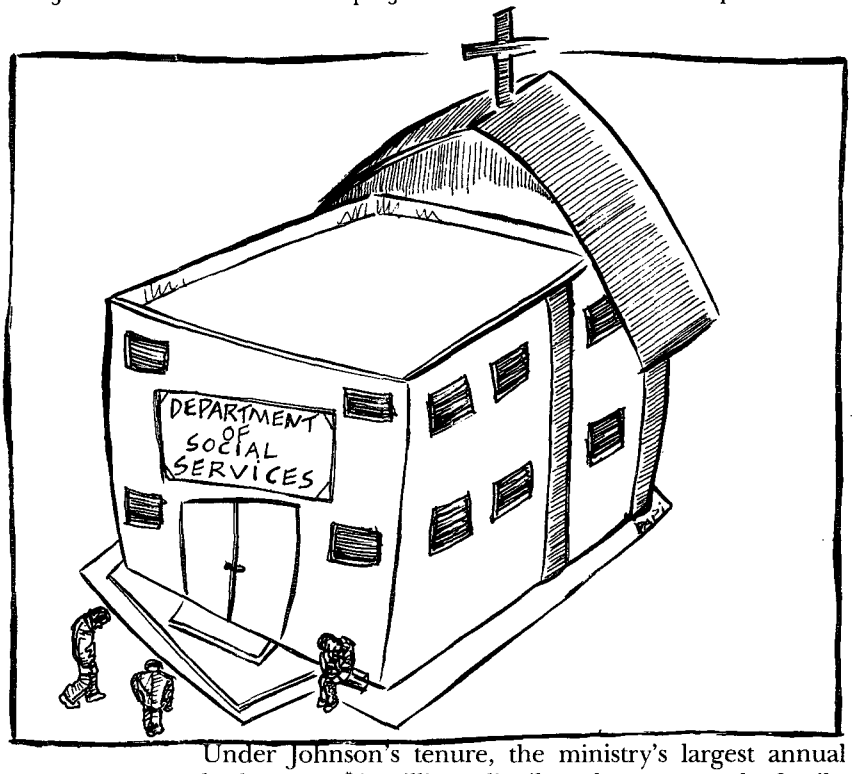
While credentialing requirements are appropriate in certain kinds of social-service work (no one wants volunteer "doctors" providing them medical care), they may be unnecessary elsewhere. In Detroit, DSS director Sam Chambers and his friends in the religious social-service sector are trying to design more creative programs with a greater role for paraprofessionals and volunteers. Unfortunately, such collaboration seems to be exceptional.

Organizational Drift

At its heart, a religion-based service provider aims to transform lives. Such a goal can be difficult to measure by objective, quantitative data. That's why program leaders, when conferring with supporters in the private sector, typically tell stories. Progress in personal transformation is often judged by such things as changed language, faithful attendance in education/training programs, increased punctuality and personal responsibility, willingness to work, improved social relations with staff, reaffiliation with family, avoidance of drugs, commitment to financial accountability, greater reliability, and increasing initiative and enthusiasm. These often intangible and "qualitative" changes are the very ones credited with permanent socioeconomic improvement.

Government, by contrast, focuses on objective statistics, usually to measure the number of commodities provided to a needy person or neighborhood. Consequently, nonprofits receiving government funds start counting numbers and recording statistics. And to ensure continued receipt of state dollars, they may start investing more effort in programs that produce easily quantifiable results rather than in holistic ministry that produces qualitative change.

REACH's Linda Smith reports that the tone of the group's programs has changed. Before receiving major government grants, the ministry emphasized "human development," with great attention to moral and spiritual matters. "Our experience showed that if we didn't do this, we could move people into a house, but they'd trash it and not make the mortgage payments," says former director Johnson. Now the ministry's help is more "commodified" (providing people material goods such as houses) and its work is more project-oriented than relationship-oriented.



Under Johnson's tenure, the ministry's largest annual budget was $1 million, distributed across youth, family, and economic-development programs. Today, the thrust of REACH's energy is on housing rehabilitation and construction, programs for which they can obtain major federal and state grants. REACH recently secured a $1.7 million grant for a major housing initiative.

"Government funding will not realistically finance your Christian, holistic, or evangelistic purpose. You can't use it for that," says Virgil Gulker, a guru of the religion-based service community who has founded numerous projects in Michigan for the poor. "So you end up evaluating quantitative things—how many houses did you build, how many meals did you serve, how many jobs did you find—that will have no impact on your organization's original purposes, other than to diminish that original purpose or mission."

Secularization

Gulker's insights touch on the crux of the issue of government funding of religion-based providers: the potential danger of secularization. REACH's current executive

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director, Pamela Martin Turner, admits quite openly that REACH has "evolved into a more secular, more ecumenical organization than in past years. . . . To some large extent, the work of the past was primarily based on faith, on a commitment to spiritual and religious values. Whereas now, on the staff level, there may be some internal spiritual value that compels people to come to work, but that's not the explicit understanding. People come to work because it's their job and they're expected to do a good job."

The de-emphasis on the spiritual comes with a cost: REACH staffers are less likely to bring their religious convictions to bear in addressing, confronting, and meeting the needs of the needy. "We do not talk about the spiritual needs at all," says Smith. "When we worked out of the church, I knew every day, without a doubt, why I was there." Now, she says, "some days I come to work and people come in and I feel like I can't help them because they need more than to just talk about putting them in a house. It's a struggle for me."

People of faith, of course, are concerned about the threat of secularization. But others ought to be worried as well, for the dilution of a ministry's religious distinctiveness may remove the very element that makes it so effective in addressing social problems.

Even ministries known for their spiritually integrated approach are susceptible. The Detroit-based Joy of Jesus accepts no government funding, but financial problems led it to incorporate a separate, not explicitly religious, nonprofit partner organization called R-3 that solicits state funds. These are used principally in the organization's housing-redevelopment program. The ministry also moved its job training program to R-3 because private donations were insufficient to maintain it. Instructor Kevin Feldman reports that he used to integrate biblical principles in the training curriculum and pray with his students, but had to stop once the organization received government funding. In Feldman's view, the result has been that "our success rate has dramatically declined." Fewer individuals are completing the program and fewer are finding and retaining jobs.

After reviewing this ledger of potential pitfalls, some faith-based groups in Michigan have decided that accepting government funds is too risky. "In general, there's a need for collaborative effort between the public and private sectors," says Joel Samy of American Family Hope, a Michigan nonprofit that helps the working poor. "But it's in the best interests of a church-based ministry to have minimal involvement with government at the funding level." Like Virgil Gulker and others, Samy worries that religion-based providers will exchange their original mission—with its emphasis on spiritual awakening—for a governmental agenda.

Exceptions to the Rule

Although the problems afflicting religious nonprofits in their collaboration with the state of Michigan are serious, they do not seem to be inevitable. Some religious agencies have been able to work with government entities, accept tax dollars, and avoid the pitfalls identified above. If Michigan builds on these successful examples of collaboration rather than replicating its faulty models, then Engler's goal of transforming lives by cooperating with nonprofits in social welfare could be advanced.

Detroit Rescue Mission Ministries (DRMM) provides substance-abuse programs and emergency shelter for homeless men and women. It enjoys excellent relations with Wayne County's Sam Chambers and has collaborated for decades with the county department of social services. Chambers has established a community-wide planning board, including several religion-based providers, to discuss policy. Chambers welcomes input from the religious nonprofits. These groups, he explains, are closer to the needs, more "user-friendly," and less bureaucratic and intimidating. Noting that Detroit has 4,000 churches but only 33 welfare offices, Chambers says it is obvious he can meet needs more effectively by tapping into the religious sector. Such groups "do a better job because they tend to treat the whole man," he says.

Aware of the church-state issues involved, Chambers says his evaluations of the religious nonprofits his department works with are "outcome-based." His office enforces health and safety regulations and conducts financial audits, but does not interfere with ministries' internal policies and procedures. There is no attempt to force groups to change their holistic approach or extirpate their religious sensibilities. Chambers says he works with DRMM because the ministry's track record is stellar: It has helped turn around the lives of some of the toughest clients in the welfare system.

This partnership works not only because the approach Chambers takes is one of genuine, respectful, and pragmatic collaboration, but also because DRMM has a clear vision for its ministry and strong leadership. Its president, Don DeVos, says he'll refuse any government grant that compromises the ministry's commitment to holistic ministry. So far, it seems, he has.

In Grand Rapids, Bethany Christian Services works with the Kent County Department of Social Services to provide foster care for at-risk children and residential care for abused and neglected children and juvenile sexual offenders. Its relationship with government is, like DRMM's, cordial and long-standing. John Cole, the program manager for the local DSS, is the ministry's principal government contact. Like Chambers, Cole takes a results-oriented and respectful approach to the partnership. Cole says he "doesn't implement any policy without first developing it in draft form and asking the private groups what they think about it." His staff meets with BCS staff monthly, and he meets personally with BCS leaders quarterly to discuss policy design and implementation.

Unfortunately, according to Cole, this kind of genuine and broad-based collaboration is rare in Michigan. He says that, despite the governor's strong support for privatization, most county welfare offices are biased against purchasing welfare services from private nonprofits. Because of the entrenched state bureaucracy, Cole explains, "There's a preference for county departments to provide their own services." And even when local welfare departments do purchase services from nonprofits, they do not do so as part of a broad, genuine, partnership. "They may purchase services but I don't think they really

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believe that that's the way they ought to go. I've been in meetings where they [government officials] are very critical of the [private] agencies," Cole says. And at the state level, he says, "the arrangements are very much businesslike and one-sided," even "adversarial" at times.

Redefining the Relationship

Some of the most fruitful state collaborations with religion-based social welfare groups in Michigan appear to rest largely on the goodwill of certain government officials who treat nonprofits as equals and are more interested in enabling religiously based organizations to transform lives than they are in rigorously enforcing a church-state divide. This is a shaky foundation for the partnerships, since such individuals could be replaced by less sympathetic officials. Clearly, a stronger foundation for public-private partnerships is needed. And it must be built soon, before, in our zeal for welfare reform and "devolution," a whole superstructure of arrangements between government and nonprofits is erected.

Some religiously rooted groups will, of course, continue to avoid any involvement with state contracts as they offer help to the needy, and their effectiveness bolsters the case for others to do likewise. But some ministries believe that relying on public funds through state and federal agencies is desirable and potentially beneficial. My investigation into private non-profits in Michigan suggests several steps that both government and faith-based providers could take to guard the integrity of groups that seek out government grants and contracts.

To start, state lawmakers and agency officials need to listen more attentively to the good Samaritans on the front lines. When big government imperiously issues decrees from on high, its private "partners" bust their budgets trying to conform. Genuine collaboration would mean, at best, that ministries would have some say in designing the regulations. Or, at least, that government entities would allow their grassroots partners flexibility in achieving the intentions of the regulations, if not the letter of the law. Otherwise, "working together" means that ministries accomplish less with the "help" they receive from government than they would have in the absence of a state contract.

Politicians must redefine "public-private partnership" to go beyond the "delivery system" model, which is principally concerned with saving money, not transforming lives. In this model, the state decides what services will be offered and then pays private groups to deliver them. Some recent initiatives by Engler suggest he is on the right track. For example, Engler's "Clergy Summit" in October shows an awareness not only of the cost-effectiveness of outreach by the religious community, but also of that community's moral authority in low-income neighborhoods. At the meeting, state officials are expected to solicit the help of pastors in publicizing welfare services. Says an Engler spokesman, "If we can tap into the moral authority and trust that the pastors have, we are much more likely to reach people than if we just hope that some bureaucratic edict from the impersonal state government is suddenly going to make things happen." Absolutely right.

In addition, state officials are now discussing how to broaden their arrangement with the Salvation Army. Social service director Jerry Miller says the state now recognizes the partnership should go beyond the provision of emergency services: "We need to work to get [the homeless] into transitional housing"—and, eventually, permanently off the streets. It remains to be seen whether the Army can conduct this additional work in a way that takes full advantage of its strengths as a religion-based provider of social services.

The Engler administration can go even further. It can hold up the work of officials like Sam Chambers and John Cole as examples of a smart way to develop genuine, effective partnerships with religious organizations. It's not enough for Engler to praise collaboration with these nonprofits. His administration must clearly define the kind of collaboration that is desirable—and it should look more like the partnership between Wayne County and the Detroit Rescue Mission than the current partnership between Lansing and the Salvation Army.

GOVERNMENT OFFICIALS MUST ACKNOWLEDGE THE VALUE OF A RELIGIOUSLY-BASED, HOLISTIC APPROACH TO SERVING THE NEEDY.

Finally, government officials must acknowledge the value of a religion-based, holistic approach to serving the needy, and take the necessary actions to ensure that ministries agreeing to work with the state do not thereby stumble into the traps discussed. The government welfare system has failed, not only because it is a poor deliverer of the standard package of welfare benefits, but because the package itself is flawed. Cash and commodities are not the things that transform poor people's lives. Religious welfare providers have a better record in changing lives not only because they deliver services more effectively, but because their services are different. They provide "goods" like love, emotional support, spiritual instruction, trust, accountability, moral authority, hope, character training, and basic life skills—all in the context of personal relationships with the poor. They suffer with and walk alongside needy people until those people are able to walk out of the underclass.

Any arrangement with state agencies that fails to give this level of autonomy to religiously grounded outreach efforts may serve the interests of government bureaucrats or certain activists for the poor. But it will not, in the long run, help the needy to help themselves.

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NORMAN'S CONQUEST

A Commentary on the Podhoretz Legacy

MARK GERSON

In the early 1960s, the great Columbia professor and literary critic Lionel Trilling warned of the impending "Norman Invasion." He was talking about three brash and brilliant young stars of the literary world—Norman O. Brown, Norman Mailer, and Norman Podhoretz. A generation later, no one recalls Norman O. Brown, and Norman Mailer will be remembered as an unharnessed genius. Of Trilling's invaders, one has conquered: Norman Podhoretz.

William, the great Norman conqueror of 1066, left behind the glorious Bayeux Tapestry detailing the story of his invasion of England. Despite two world wars and countless smaller ones, the tapestry remains with us. Norman Podhoretz has left us not a tapestry, but 412 issues of *Commentary*, which *The Economist* once called "the best magazine in the world." Podhoretz served as its editor in chief from February 1960 until May of this year. These were the years and this was the magazine in which neoconservatism—one of the most important political movements of this century—was conceived, developed, and eventually blossomed.

What hath Norman Podhoretz wrought? Three extraordinary contributions to our intellectual culture stand out. First, Podhoretz and his *Commentary* writers were the intellectual force behind Ronald Reagan's Cold War battles. Their ideas, harnessed by a gifted statesman and backed by a strong and capable military, helped bring about the collapse of the Soviet Union and the intellectual delegitimation of Third World and anti-Zionist politics.

Another legacy of *Commentary* is evident in today's debate over affirmative action. Podhoretz and his writers, strong supporters of the civil-rights movement in the 1960s, have maintained a steadfast opposition to racial classifications or preferences throughout their careers. When the honorable movement of Martin Luther King Jr. veered into a realm of quotas, racial preferences, and social engineering, Podhoretz stood firm. *Commentary* authors identified the grave moral weaknesses of affirmative action before anyone else, warning that quotas betrayed the promise of civil rights and victimized their intended beneficiaries. Present-day opponents of quotas often sound like they are quoting from *Commentary* articles written two decades ago.

The same can be said about discussions regarding what Lionel Trilling called the "adversary culture"—opponents of middle-class values whose influence spreads far beyond the college campuses where the critics flourish. While many Americans once tolerated these people, praising their "idealism," Podhoretz and the neoconservatives saw them as destructive, nihilistic, and ultimately dangerous. Rare for intellectuals, the neoconservatives celebrated the prosaic and unromantic culture of the ordinary American. In so doing, they provided bourgeois culture with the intellectual self-confidence to stand up against those whom most now recognize as cultural barbarians.

BEGINNINGS

Born in 1930, Podhoretz was raised in a lapsed Orthodox Jewish home in Brooklyn, New York. After graduating from high school, he enrolled at Columbia University. There he became the protégé of Lionel Trilling and distinguished himself as one of the brightest literary minds of his generation. After graduate studies at Cambridge University, Podhoretz served for two years in the United States Army before returning home to assume a position as an assistant editor of *Commentary*—a job that Trilling had arranged for him. While at *Commentary*, Podhoretz wrote prolifically, publishing in nearly every New York magazine of note. In present-day discussions of neoconservatism, it is often said that Podhoretz (and the other neoconservatives) are refugees from the Left who, in reaction to the 1960s counterculture, moved rightward. Although Podhoretz was a liberal in that he supported the New Deal and civil rights, his work in the 1950s demonstrates how that observation reveals far more about changes in liberalism than changes in Podhoretz.

While the topics of Podhoretz's essays in the 1950s ranged from William Faulkner to nuclear war, they reveal the skepticism of a serious critic inclined to doubt any simple answers to social, political, and literary questions. Rejecting the rationalist and utopian themes of liberalism, Podhoretz had a great appreciation for the commonplace and the prosaic. In a 1957 essay, Podhoretz indicted liber-

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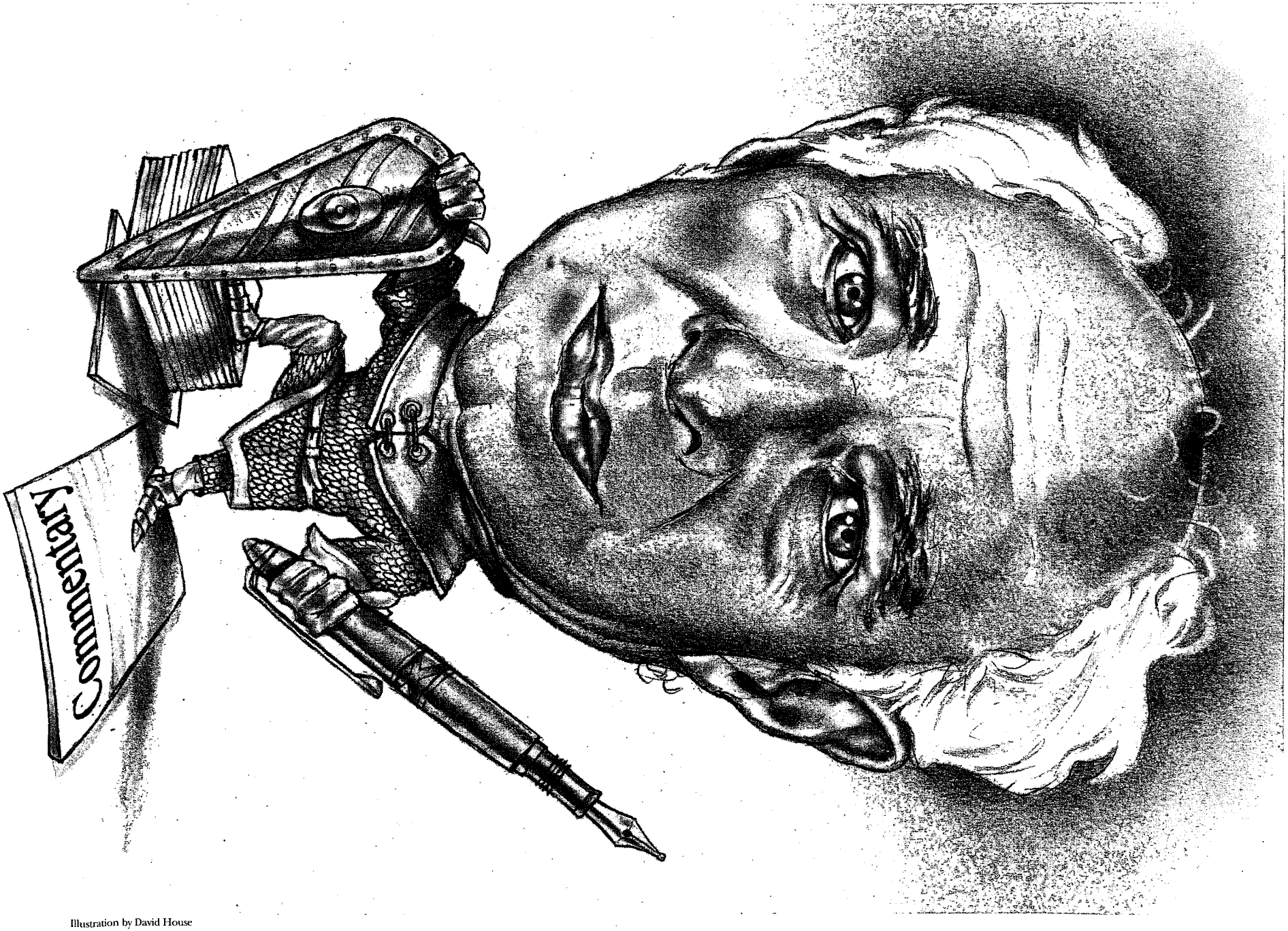

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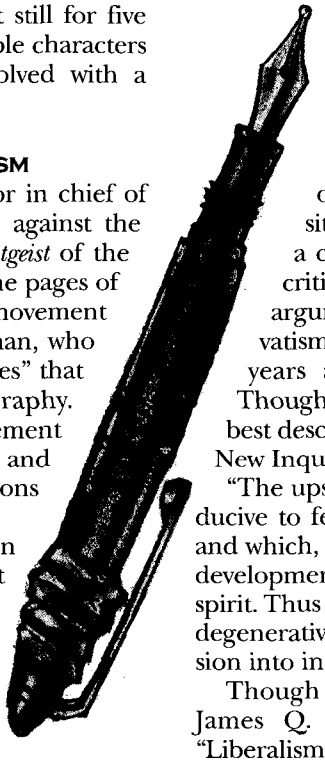
alism for being unable to "take a sufficiently complicated view of reality." Liberalism was "a conglomeration of attitudes suitable only to the naive, the callow, the rash: in short, the immature. Its view of the world was seen to be an undignified, indeed dangerous philosophy for the leading nation in the West to entertain."

In "The Know-Nothing Bohemians," a seminal 1958 essay in *Partisan Review*, Podhoretz focused his attack on what he regarded as an exceptionally naive, callow, and immature group of leftists—the Beats, a group of literary intellectuals centered in Greenwich Village who were attaining increasing prominence in American letters. Podhoretz charged that the Beats' disdain for traditional, middle-class morality translated into a dangerous nihilism, "the revolution of the spiritually underprivileged and the crippled of soul—young men who can't think straight and so hate anyone who can." For Podhoretz, the message of their animosity toward private property and the middle class was clear: "Kill the intellectuals who can talk coherently, kill the people who can sit still for five minutes at a time, kill those incomprehensible characters who are capable of getting seriously involved with a woman, a job, a cause."

The Implosion of Liberalism

In 1959, Podhoretz was named the editor in chief of *Commentary*, but he did not take up arms against the nihilists right away. In keeping with the *zeitgeist* of the times, he flirted with the Left. He opened the pages of *Commentary* to writers supporting the peace movement and radical cultural critics like Paul Goodman, who wrote of the "beautiful cultural consequences" that would follow from legalizing pornography. Podhoretz upset many people with his movement toward the Left—namely Lionel Trilling and Irving Kristol—but maintained his connections to the traditional liberal community as well.



The Vietnam War proved a pivotal event in the development of Podhoretz's thought, but not in the way it would for so many others of his generation. Podhoretz opposed military intervention in Vietnam, and under his stewardship, *Commentary* was the first magazine to seriously consider the war and its potential ramifications. His opposition was always on tactical grounds; he maintained simply that it was a conflict from which the United States could not emerge victorious. To Podhoretz, this one error of the United States did not change the fact that communism and the Soviet Union were evil, and did not suggest any fundamental flaws in the American way of life. The Left and the counterculture, on the other hand, used the war to impugn American institutions like the family and the university.

So while Podhoretz opposed the war, his opposition to the antiwar movement was more intense and ultimately more important. His position was barely represented in the intellectual community. He saw liberal intellectuals, colleagues whom he respected and trusted, fail to criticize increasingly militant student protesters. Whatever the students did—even when radicals at Columbia urinated on the carpet in the office of university president Grayson Kirk—liberal professors praised the "idealism" of the students and excused their tactics as the excesses of youthful exuberance. Podhoretz's wife, the noted writer Midge Decter, recalls the student takeover at Columbia University. She was at a party of New York intellectuals, and criticized the students who had overturned files and destroyed a professor's life's work. Dwight MacDonald, a major figure on the New York intellectual scene for 25 years, responded, "Obviously, you care more about material values than human values."

This incident was emblematic of what Podhoretz, Decter, and their allies identified as a major crisis in liberalism. Though the term "neoconservatism" was not coined until the early 1970s—by the socialist Michael Harrington—it is used now to describe the New York intellectuals and their compatriots who opposed the counterculture and its various permutations. What Podhoretz had called in 1957 "a conglomeration of attitudes suitable only to the naive, the callow, the rash" imploded 10 years later. Unable or unwilling to define and protect its principles against the radical onslaught, liberalism self-destructed as a coherent, governing philosophy—with devastating effects on its key institutional expressions: the university and the government. Though he was not yet a conservative, Podhoretz became as effective a critic of the Left as anyone on the Right. Many arguments that we now regard as staples of conservatism originated in the pages of *Commentary* 20 years ago. An example is political correctness: Though the term was not coined until the 1980s, it was best described in a 1973 *Commentary* article called "The New Inquisitors," written by Podhoretz himself:

"The upshot is an atmosphere which is no longer conducive to fearless inquiry or even to playful speculation and which, far from encouraging, positively obstructs the development of independence of mind and of the critical spirit. Thus do our colleges and universities continue their degenerative mutation from sanctuaries for free discussion into inquisitorial agents of a dogmatic secular faith."

Though Podhoretz and several others—especially James Q. Wilson, whose 1972 *Commentary* article, "Liberalism Versus Liberal Education," explains perfectly the crisis in higher education today—tried to protect the university, they saw that their task was virtually hopeless. The university was liberalism's home turf, and was the first casualty of the liberal implosion. The issue to which Norman Podhoretz and *Commentary* dedicated most of their ideological firepower was the legacy of the civil rights movement: affirmative action and quotas.

Originally conceived by President Kennedy, affirmative action was designed to encourage institutions to make a concerted effort to be inclusive of all people. Podhoretz always supported this. In his 1979 memoirs, *Breaking Ranks*, Podhoretz recalled saying when the debate had begun earlier in that decade that "I supported special efforts to recruit qualified blacks and that I also supported special efforts to help unqualified blacks compete on an equal footing." But affirmative action had soon

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become a series of programs and benefits intended to give preference to people based upon their race, and, over time, upon their ethnicity, gender, and sexual orientation as well. And, to Podhoretz, this violated a crucial tenet of his liberalism—that an individual should not be judged on the basis of an involuntary characteristic. Consequently, Podhoretz made *Commentary* the intellectual center of opposition to affirmative action. Throughout the 1970s, *Commentary* attacked affirmative action from every angle.

Commentary authors were among the first to argue that those who would suffer the most from affirmative action programs would be the intended beneficiaries; that those not slated to "benefit" from affirmative action would react bitterly when a member of a preferred group received an admissions slot or a job on the basis of race or another superfluous category; and that those "minorities" in the institutions would constantly feel the need to prove themselves worthy, to demonstrate that they were not a "quota hire." As Michael Novak noted in a 1976 *Commentary* article, "If you grant no responsibility or hope for their own advancement to blacks, but treat their needs as in every respect due to a form of victimization, then no one calls you a racist; you are regarded, instead, as a friend to blacks. 'Don't blame the victim' is the slogan of such friendship. But if, on the other hand, you assert that blacks are equal to whites in potency, moral spirit, dignity, responsibility, and power over their own future, and deny that they are mere pawns and victims, then you set off a chorus of alarums and find yourself on treacherous emotional territory."

HE HAS TAUGHT US THAT EVERYTHING WE TREASURE IS FRAGILE, AND NEEDS CONSTANT ATTENTION AND DEFENSE.

The Failure of Nerve

After the American defeat in Vietnam, Podhoretz saw this same shifting of responsibility that liberalism had come to embody on the international scene. Podhoretz believed the Vietnam War was a major tactical blunder, but America's misfortune should not serve as a precedent. America was the same great, powerful, and responsible nation that she was when she embarked on this mistaken path. And when the United States had to become engaged militarily in the future, she should do so with a clear conscience and with strength of will.

This was not so easily done. The Vietnam War had taken quite a toll on the American people: As Midge Decter explained in a 1976 *Commentary* symposium, "Defeat (and it is a tribute to something that one should feel impelled to remind on this point) is not good for people. And it is no better for nations than for individuals. It humiliates, raises doubts, heightens acrimony, increases recourse to tricky euphemism, and stirs up all those lurking and treacherously seductive fantasies of escape. Most of all, it paralyzes, and once again does so no less to nations than to individuals."

In the wake of the defeat in Vietnam, Podhoretz worried about what he called "a failure of nerve" triggering "a culture of appeasement." The Soviet Union was as evil as ever, gobbling up nations and subjecting them to totalitarian terror. As he wrote in *Commentary* in 1976, the Soviet Union is "the most determined, ferocious and barbarous enemy ever to have appeared on the earth." Podhoretz resurrected the argument that Communism is morally equivalent to Nazism; in fact more dangerous in one respect—intellectuals and their young charges had never been attracted to Nazism.

How to stop Soviet aggression? Only the United States would have the power to do so, and effective resistance would demand not only substantial resources but a will to win. And in the mid-1970s, following Vietnam, Podhoretz was worried that such a will did not exist. "While the Soviet Union engages in the most massive military buildup in the history of the world, we haggle over every weapon. We treat our own military leaders as though they were wearing the uniform of a foreign power. Everything they tell us about our military needs is greeted with hostility." Podhoretz savaged anyone who stood in the way of this American effort. That included not only the political and intellectual Left, but the business community as well: Corporate moguls were all too ready to sacrifice anti-communist principle for the profits in trading and dealing with America's totalitarian enemies. Self-indulgence on the Right was, according to Podhoretz, just as bad as self-indulgence on the Left. Two books he published in this period, *The Present Danger* and *Why We Were in Vietnam*, sought to establish the righteousness of the anticommunist cause, and the moral and military readiness of the United States to prosecute it.

In addition to his own writing, Podhoretz published many important articles on these subjects. Especially notable were Richard Pipes's work on the Soviet Union and Robert Tucker's essays on the danger posed by the oil-producing states. But the most significant essay he published during that period was Jeane Kirkpatrick's "Dictatorships and Double Standards," in November 1979. Kirkpatrick wrote that anticommunism should be the priority of American foreign policy, even if that meant making alliances with nondemocratic, authoritarian governments. Communist governments were worse than noncommunist authoritarian governments because the former destroy civil society and ruin the lives of all of their inhabitants.

"Dictatorships and Double Standards" was widely read: One prominent reader was Ronald Reagan, then running for president. He expressed his admiration for Kirkpatrick, and later appointed her U.S. ambassador to the United Nations when he became president. Kirkpatrick used her position as a bully pulpit from which to defend American values and interests and to excoriate its enemies in the Communist bloc and the Third World.

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Kirkpatrick was not the first *Commentary* writer to defend Podhoretz's ideals from the floor of the United Nations. In the 1970s, there was no place where the ideas of communism—or at least the idea that communism was no worse than American democracy—were more prevalent than in the United Nations. Often combined with virulent anti-Zionism and anti-Semitism, the Soviet Union and its Third World charges passed resolutions blasting the West and the Jews. And the West, by and large, had little to say in response. At least, until Norman Podhoretz gained influence in that body. In 1975, Podhoretz published a remarkable essay by Daniel Patrick Moynihan, "The United States in Opposition," calling upon the West to take up the war of ideas with the pernicious forces of the Soviet Union and the Third World. This article also was widely read—Secretary of State Henry Kissinger called to congratulate its author—and President Gerald Ford responded by appointing Moynihan ambassador to the United Nations.

Moynihan took the job in 1975, at the height of the anti-Semitism and anti-Western sentiment in the U.N. The United States could not have found a better man to respond to the virulent ideological challenge being put forth by her enemies. In November 1975, Ugandan dictator Idi Amin took to the floor of the United Nations to deliver one of the most anti-Semitic speeches given since Hitler. Maintaining that "the United States of America has been colonized by the Zionists who hold all the tools of development and power," Amin called upon the United States to "rid their society of the Zionists," and for the United Nations to pursue the "extinction of Israel as a state." The United Nations delegates responded with a standing ovation, and the accompanying resolution that he sponsored—"Zionism is a form of racism and racial discrimination"—passed easily. A majority of the nations of the world had, in the very institution that was once the hope of liberalism in the wake of Nazism, passed a resolution that Hitler could have offered, and did so with a fervor Hitler would have admired. A response was needed, and Ambassador Moynihan turned to his old editor for advice.

Podhoretz drafted most of the speech with which Moynihan responded. It was a moving address, one that sent shock waves through the United Nations and upset countless liberals. That speech, and the events leading up to it, are masterfully recounted in Moynihan's memoirs of his service at the United Nations, *A Dangerous Place*, which is dedicated to Norman Podhoretz and Leonard Garment. Moynihan became so popular in New York as a result of that speech that he was catapulted to the United States Senate in 1976, with Norman Podhoretz as one of his principal advisors.

By the end of the 1970s, liberalism had, in the mind of Norman Podhoretz, become so corrupted that there was no longer any place for him in it or in the Democratic Party. Although Podhoretz did not resign from the Democratic Party, he voted for Ronald Reagan—the first time he voted Republican in a presidential election. But he had good reason to do so; Ronald Reagan and his staff took the ideas in *Commentary* very seriously, and *The Present Danger* was required reading in the Reagan campaign.

While Reagan's stance toward Communism and Israel were the main reasons for Podhoretz's support, Podhoretz had also become more conservative on domestic issues. Midge Decter calls an aversion to capitalism "the last vestige of our liberalism," and they were supporters of capitalism by 1981 when Podhoretz published "The New Defenders of Capitalism" in the *Harvard Business Review*. In that article he wrote:

"[Capitalism] is a necessary, if not a sufficient, condition of freedom; it is both a necessary and a sufficient condition of wealth; it provides a better chance than any known alternative for the most widespread sharing in the wealth it produces."

His support for capitalism deepened throughout the decade, as he published important pieces on the subject by its great celebrators George Gilder and Michael Novak. Podhoretz also saw clearly the failures of the welfare state, and opened his pages to thinkers like Charles Murray, who diagnosed its brutal unintended consequences. He also maintained an assault on affirmative action; indeed, Thomas Sowell's December 1989 essay, "Affirmative Action: A Worldwide Disaster," may be the best critique of quotas ever penned.

But his prime area of interest remained foreign policy. Though many of his contributors, friends, and relatives (notably his son-in-law Elliott Abrams) served in high positions in the Reagan administration, Podhoretz harshly criticized the president for capitulating to the Soviets. His 1982 *New York Times Magazine* article, "The Neoconservative Anguish over Reagan's Foreign Policy," makes this case quite succinctly. Podhoretz detected Reagan's tendency, as George Will put it, to love commerce more than loathe communism—and make deals with the Soviets when his corporate constituency thought that doing so would yield a profit. Podhoretz stated boldly that America's most important responsibility was to fight the evil of communism.

Fighter for the Right

After those 412 issues of *Commentary*, what has Norman Podhoretz taught us? Several important lessons. He has taught us that everything we treasure is fragile, and needs constant attention and defense. The implosion of liberalism in the 1960s is destroying our university system. The ideas of Martin Luther King Jr. were bastardized into support for race-based preferences that are anathema to the central liberal principle that people should be judged on their individual merits.

Leftism took over liberalism because Leftists never forgot, as others did, that ideas —not economic interests, not social arrangements—rule the world. Podhoretz has constantly reminded us of this truth, when he stressed that freedom could only be preserved if America had the will to defend it herself, when he bore witness to the original tenets of the civil-rights movement, when he scored communism and supported Israel. In his valedictory statement in the June 1995 issue of *Commentary*, Podhoretz quotes Theodore Roosevelt. "Aggressive fighting for the right is the noblest sport the world affords." Podhoretz has spent a long and fruitful career fighting for the right, and we are all indebted to him for it.

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BEYOND THE WATER'S EDGE

Military and Foreign Policy Issues for the '96 Campaign

GEORGE WEIGEL, MALCOLM WALLOP, JAMES M. INHOFE, THOMAS MOORE, ELAINE DONNELLY, PAULA J. DOBRIANSKY, ELLIOTT ABRAMS, SETH CROPSEY

While the Congress is primarily responsible for national domestic policy, the president is the commander in chief of the armed forces and is chiefly responsible for America's foreign policy. Next year's presidential race is therefore an important opportunity for Americans to debate the direction of America's military and our country's role in the world. In late September, Policy Review *asked eight leading conservatives to define the most important defense and foreign-policy issues of the 1996 elections.*

GEORGE WEIGEL

The United States has not had a foreign policy since January 20, 1993. Before then, with the exception of the Gulf War, the foreign and defense policies of the Bush administration were geared not to shaping the post-Cold War future, but to managing the Cold War's endgame. The Republican president inaugurated on January 20, 1997, will thus have an immense responsibility: creating the first post-Cold War foreign policy worthy of the name.

If the candidates in the 1996 GOP presidential primaries could forge agreement on the following six points, presidential leadership in 1997 and beyond will prove much easier:

(1) The United States needs a foreign policy. With the end of the Cold War, time, energy, and resources can and must be directed toward reconstructing civil society in America. But disengagement is not an option for the world's leading democracy and leading military power. The proliferation of ballistic-missile technology and weapons of mass destruction, hostile ideologies, and international terrorism place America always at risk. The risks are manageable, but not unless they are acknowledged and dealt with.

(2) The completion and preservation of freedom's victory in the Cold War requires the expansion of NATO before the end of the century. Poland, the Czech Republic, Hungary, and Slovakia should be admitted as full members, and Ukraine and the Baltic states engaged in some form of associate membership en route to full participation. As even Strobe Talbott now concedes, NATO expansion is a mortal threat neither to Russia nor to the evolution of Russian democracy. An appropriate security relationship can be defined between the new NATO and the Russian Federation while the former democracy evolves. If the history of Europe in the 20th century teaches us anything, it is that an ounce of preventive diplomacy and collective security is worth a ton of terrible cure.

(3) Preventing the spread of ballistic-missile technology and weapons of mass destruction ought to be one of the highest priorities of U.S. national-security policy. This means clamping down on regimes that import or export such weapons, as well as improving counter-terrorist measures. The new president should confer quietly with Congress and America's principal allies on the conditions under which preemptive military action will be used to counter weapons proliferation against rogue states or terrorist organizations. The president should appoint a national coordinator of counter-terrorism, and he should instruct the relevant intelligence agencies and the FBI that a coordinated counter-terrorism program is essential to national security and that institutional roadblocks put in its way will be swiftly removed.

(4) The essential technological complement to an assertive policy of nonproliferation and counter-terrorism is missile defense. It is criminally irresponsible to deny the American people and America's allies the benefits of missile-defense systems just because of Cold War shibboleths. Early in his term, the new president, in consultation with the Congress, should announce America's withdrawal from the Anti-Ballistic Missile Treaty, while pledging to share appropriate defense technologies with its allies.

(5) For tens of millions of people around the world, the United States remains a beacon of freedom. U.S. human-rights policy must be reinvigorated, stressing the universality of such basic human rights as religious freedom, free speech, freedom of association, and freedom of the press. The United States should rebut the argument that these rights are "culturally conditioned," while making vigorous use of instruments like the National Endowment for Democracy to support proponents of freedom living in totalitarian and authoritarian societies. We should place special emphasis on aid to the democratic opposition in China and Cuba.

(6) On its 50th anniversary, the United Nations is in

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desperate straits. It has demonstrated its ineptitude at "peacekeeping" in Bosnia, its functional agencies (like the World Health Organization) are awash in corruption, and the "soft" side of the U.N. has become a hotbed of internationalized libertinism, as demonstrated by the 1994 (anti-) population conference in Cairo and the 1995 Beijing conference on women. The next administration should reform the U.N. and its functional agencies, while shunning wastes of time and energy like the Cairo and Beijing conferences and the 1995 Copenhagen "Social Summit." If, by the year 2000, the U.N. has not been dramatically cleaned up and slimmed down, another Republican administration should seriously consider withdrawing from an institution that, at present, hinders the pursuit of the very ends it was intended to serve.

GEORGE WEIGEL *is the president of the Ethics and Public Policy Center, in Washington, D.C., and the author of nine books, including* Idealism Without Illusions: U.S. Foreign Policy in the 1990s.

MALCOLM WALLOP

Any candidate worthy of consideration should begin by understanding and expressing that the peace and prosperity we enjoy were dearly bought with the blood of Americans on countless battlefields the world over. No nation has given more selflessly to the cause of liberty; no nation has ever had a people wiser in distinguishing among the nations of the world our natural friends, our inevitable enemies, and the barbarians to be left alone. Thanks to the sacrifices of American people, we can say today, as Abraham Lincoln said a century and a half ago, that "all the armies of Europe, Asia, and Africa combined with all the treasure of the earth, our own excepted, could not by force make a track on the Blue Ridge or take a drink from the Ohio in a trial of a thousand years."

WE MUST NOT SQUANDER AMERICAN GENEROSITY IN PETTY VENTURES COOKED UP BY PETTY U.N. BUREAUCRATS.
—MALCOLM WALLOP

So, candidates, begin with pride in your country and gratitude to its people. We are a great country and deserve a prominent place in world affairs. We must never diminish our strength and purpose, since as Charles de Gaulle used to jest, the future lasts a long time. Serious threats will surely arise; whether they prove deadly will depend on us. Americans can be defeated or our interests thwarted only if we lose our moral virtues, make foolish moves in the world, and neglect our military power. No government has ever matched the Clinton administration in these failings.

America's only glaring weakness over the past half-century has been leadership sometimes unworthy of the American people. The nation's "leadership class"—high officials, professors, and heads of big corporations—has committed America's youth, blood, and credit to wars it did not intend to win. Communism was here to stay, they thought, and even Republican stars such as Henry Kissinger counseled accommodation with it. They dreamed not of freedom's triumph but of convergence and accommodation to tyranny. They dreamed up the idiocy that America's safety depends on continued vulnerability to missile attack, a doctrine that still prevails in Washington. These opportunities to equivocate will come again.

Since President Bush's time, this leadership class has decided that political and military history has ended and that our real enemies are the French and Japanese who sell us cheese and cars at good prices.

First observation: Foreign policy does not exist in a vacuum; it must have military capability to protect and project it. Diplomacy without power is a prayer—not to God, but to one's adversary, and its fulfillment depends on the mood and whim of the party prayed to. No nation can devise a military posture until it has defined its purpose through national interest. America, therefore, needs a new doctrine to replace Monroe and containment.

Such a doctrine must acknowledge that America has legitimate interests. First is the defense of the homeland.

Second, our economy depends on trade. We need access to our trading partners.

Third, we are a nation that values travel—for trade, scholarship, science, and pleasure. Americans abroad must have a nation behind them.

Lastly, America's interest in regional stability cannot be ignored. If America's presence and purpose in the world can be doubted, if we tolerate vacuums of power, they will be filled by others, and ultimately American blood will be spilled. In the past century, we have been called upon time and again to secure peace and liberty after our leaders thought the world no longer needed us.

Along with the doctrine we need common sense—in both diplomacy and military policy. This means not squandering American generosity in petty ventures cooked up by the U.N.'s petty bureaucrats. While our leaders downsize the U.S. military and tergiversate with our commitments to traditional allies in Europe and the Pacific Rim, the future and vitality of those regions is being shaped by petty tyrants whose only asset is the willingness to make war. The administration treats military matters as a spectator sport. The foreign-policy establishment calls Americans' objections to such leadership by turns warmongering and isolationism. Our candidates should recognize these objections as wisdom.

Collective response is a contemporary stupidity. The U.N. cannot respond, nor can Europe nor NATO nor the Pacific nations, unless one of them is both willing and able to respond alone. Joiners follow leaders, but when joiners

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have no leaders, they have conferences.

As for Bosnia, the president and the supreme Allied commander in Europe should tell our allies to join us in giving Serbia an ultimatum to stop the Balkan war or else face a united declaration of war by NATO's 15 nations. Otherwise, America should quit NATO, lift the embargo, and arm the Bosnians. The continuing policy vacuum has sapped America's prestige abroad and fostered European excuses for death, destruction, and "ethnic cleansing" in their own backyard.

Lastly, America needs missile defenses. There can be no further excuses for inaction. Even Democrats say that nothing so threatens regions and continents as the proliferation of nuclear weapons. To the nuclear threat, we can now add chemical and biological weapons. The Clinton idiocy is to make us all equally vulnerable. America has the technology to protect Americans and American allies from missiles. What possible excuse can be offered for failure to act? Why should Americans or their allies be threatened and blackmailed because our leaders are hooked on treaties and invalid concepts further outmoded by recent events?

Respect for Americans, pride in our selfless achievements in this dark century, and confidence in our future are the basis of military and foreign policy. These Americans are a wise and brave lot, and they deserve both common sense and courage from their leaders.

MALCOLM WALLOP *is a former Republican senator from Wyoming and a Distinguished Fellow at The Heritage Foundation.*

JAMES M. INHOFE

In a time of great uncertainty about America's role in the world, it is not the details of America's foreign policy that trouble her citizens so much as the sense that the man in the White House doesn't know what he's doing. Republican candidates will be tempted to dwell on the Clinton administration's specific foreign-policy blunders. Some of this will, of course, be necessary and valuable. But the American people will not and should not be satisfied solely with an indictment of the president's actions.

Clinton's main problem as commander in chief is that, like many American liberals, he is uncomfortable with America's power. This makes him uncertain about how to use it. And this uncertainty is the source of the administration's misguided foreign and defense policies. The 1996 election is a superb opportunity to craft an alternative vision of presidential leadership. Articulating this vision, rather than promising a specific blueprint, should be the focus of the presidential campaign.

By seeking the U.N.'s blessing on the American-led operation in the Persian Gulf War, where U.S. interests were clearly at stake, President Bush showed that Washington was uncertain about its newly acquired status as sole superpower. Over the past three years, the Clinton administration has taken this precedent to extremes. It has subjected U.S. and NATO actions in Bosnia to U.N. approval, even where those actions directly risked the lives of troops from our major NATO allies. It has accommodated U.N.-instigated "nation-building" in Somalia, going well beyond the Bush administration's original humanitarian objectives. In an astounding abandonment of American prerogatives, Clinton sought U.N. approval of the occupation of Haiti last fall, but sought no such approval from Congress.

Many Americans have passively accepted the notion, implicit in Clinton's approach, that actions taken in the name of the U.N. are morally purer than actions taken or led by the United States. A look at the source of U.N. power reveals the emptiness of this point of view.

Whereas American decisions are shaped by Virginians, Texans, Rhode Islanders, and the free citizens of 47 other states, a majority of the nations represented at the U.N. have political and social structures that are, to one degree or another, undemocratic. Many have governments that abuse their citizens and threaten other nations. None of the representatives at the U.N., including our own, is freely elected.

Presidential candidates need to articulate the argument in a straightforward way: American power is the greatest force for good in the material world, and that power is derived from our Constitution, not from the U.N. Charter. How can the decisions of the United Nations have greater moral authority than those taken by the U.S. Congress which, despite its flaws, embodies the most representative and accountable political system in the world? No president should feel guilty for using wisely American power derived from our constitutional system.

As they make this argument, candidates must brace themselves for the inevitable charge of "isolationism." The use of this term, now being leveled against the administration's congressional critics, is meant to conjure up frightening images of the 1930s and the unchallenged rise of fascism. It fits neatly with the liberal view of the world, which sees our commitment to world leadership and our participation in the United Nations as one and the same. Much like the domestic debate over welfare, this worldview also equates our "compassion" for developing nations to the amount of foreign aid money we give away.

The candidates must explain, in positive terms, America's deep involvement in world affairs, and how this has very little to do with either the United Nations or our foreign-aid program. The combined dollar value of our foreign-aid budget and our contribution to the U.N. amounts to a tiny fraction of our private-sector trade. And we should not forget that much of our $270 billion military budget goes to keep the peace around the world, which is in everyone's interest.

In a very imperfect world, our military and economic power is derived from the fairest, most humane system of government ever devised. This should be a source of tremendous confidence for a president, not confusion and embarrassment.

As a trading partner, a military ally, and a beacon of democracy, the United States has a huge stake in world affairs. The successful candidate should affirm these roles and dispute any suggestion that our internationalism should be measured by the degree of our subservience to U.N. policies.

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THOMAS MOORE

Foreign policy without armed force is like sheet music without the orchestra. We must be concerned about the Big Questions, but we must not neglect what has been happening to the "orchestra."

General George C. Marshall once said, "The soldier's heart, the soldier's spirit, the soldier's soul are everything. Unless the soldier's soul sustains him, he cannot be relied on and will fail himself and his country in the end." Marshall understood the decisive military importance of the intangible moral factors. No doubt he knew Napoleon's dictum that "in warfare, the moral is to the material as three is to one."

The Clinton administration appears bent on crippling the military's moral powers as well as its material strength. Though it's uncomfortable, Americans must face the fact that revolutionary social policies are undermining the cohesion and combat effectiveness of the forces. Political correctness is replacing military character.

Most uniformed people agree, but dare not say it openly. Thus the problem of women in combat roles or homosexuals in the ranks is compounded by an institutionalized lie necessary to inject social deconstruction into an unwilling organism. And it leaches away the ethic of honor and integrity that are the heart of an effective military. Junior ranks see their seniors denying what everybody knows and forcing others to lie. They see careers of fine officers ruined because they will not genuflect to falsehood. They see flag officers putting self-interest above the welfare of their people. The moral damage is potentially disastrous.

Since a soldier must be "obedient unto death," sending him into battle is a moral transaction. He must be certain his life will not be wasted because of moral blindness or character defects in his commander. If his leaders are contemptuous of his sacrifice—as was the British commander who reportedly remarked in the disastrous Gallipoli campaign in 1915, "Casualties? What do I care about casualties?"—it breaks the vital link that enables him to do the bloody, terrifying work of grappling with and killing the enemy.

But mutual trust does not happen overnight. It takes attention and commitment. Commissioned and non-commissioned officers have to set good examples, displaying truthfulness and integrity as well as military competence. Any policy that undermines this process hurts national defense as surely as cutting the budget or canceling vital weapons programs.

Liberals have a teleological compulsion to remake every institution in their own image, and politicize everything they touch. They love to get their hands on the military, largely because it is a *command* institution and can be reshaped with relative ease from the top down (just as the Left, which is antidemocratic despite its sanctimonious posturing, would like to do to our entire society).

To be sure, most military men still cling to the martial virtues, the very antithesis of liberal enlightenment. The military may yet manage to remain resistant to alien transformation. But it may still be forced to undertake more "acceptable" missions, like nation-building and peacekeeping, even though the operations in Somalia and Haiti got men killed, hurt morale, and cost hundreds of millions of dollars, without benefiting any vital national interest. Liberals hope thereby to drain away the ethos of the warrior and replace it with the ethos of the global welfare caseworker.

Social policy and defense policy intersect at this issue. It could unite conservatives concerned about national security with those worried about the moral health of the nation. But strangely, Republican presidential candidates haven't focused on it. They are missing a good bet. In 1993, Clinton's decision to open the services to homosexuals generated an unprecedented outpouring of opposition. That deep reservoir of concern about the welfare of the armed forces is still there, waiting to be tapped.

Perhaps it is hard to believe that the force that triumphed so magnificently in the Persian Gulf War could ever lose its soul. After all, that extraordinary victory was due as much to superior motivation, morale, leadership, and training as it was to technological superiority. Nevertheless, we cannot afford to take these qualities for granted, for they require constant cultivation. Throughout history, complacency has always been the forerunner of military disaster. Because it occurs outside the material domain, damage to the military spirit can't be quantified. It is subtle, insidious, and generally not noticed until it is revealed in the unforgiving crucible of combat.

Every candidate who wants to become commander in chief had better make sure he will have reliable forces to carry out the nation's foreign policy and defend our vital interests. Otherwise he may one day find this now unmatched military instrument crumbling in his hands just when it is needed most.

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ELAINE DONNELLY

In July 1992, members of the Presidential Commission on the Assignment of Women in the Armed Forces visited the carrier *U.S.S. John F. Kennedy*, to hear what Navy men thought about the question of women in combat. In anticipation of the two-day field trip, the *Kennedy*'s commanding officer recorded a videotape encouraging all crew members to express their opinions freely—whether in favor or opposed—provided they were prepared to explain their rationale.

Since that time, a great deal has changed. Almost nothing remains of the laws and rules exempting women from service in or near the front lines, and candor about the consequences of unprecedented policy changes now in progress can end a military career.

The armed forces have become a prime venue for social experimentation because those most directly affected must follow orders, without visible dissent. Navy Secretary John Dalton's new policy regarding pregnant women on combat ships, for example, forbids "adverse comments" about deployability problems resulting from absences due to pregnancy.

At a time when international commitments are growing, defense budgets are shrinking, and the armed forces are carrying a heavy burden of social and cultural change,

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the next president must insist on complete information and objective evaluations throughout the chain of command. He must also be willing to reverse experimental policies that detract from morale, discipline, unit strength, and overall readiness.

A pro-defense administration should begin with sound priorities. Contrary to the notion that the volunteer force exists to provide job opportunities, the next president must recognize that the armed forces exist to defend the country, and the needs of the military must come first.

Technology and hardware are important, but money alone cannot buy a strong national defense. Wars are deterred, or fought, not by computers and weapons, but by people—young men and women who volunteer to defend their country in a still-dangerous world, despite countless sacrifices and personal risk. To improve the recruitment and retention of qualified troops, we must avoid anything that makes military life more difficult or dangerous.

Current policies placing women in or near close combat units must be reevaluated—not in terms of career opportunities, but in terms of military strength and readiness. Lives must not be sacrificed, nor missions undermined, because of front-line soldiers who are less strong, less deployable, and more vulnerable to wartime violence and capture. The definition of the word "qualified," as in "qualified to do the job," must not become flexible and therefore meaningless for the sake of women or any other favored group.

REVOLUTIONARY SOCIAL POLICIES ARE UNDERMINING THE COHESION AND COMBAT EFFECTIVENESS OF AMERICAN FORCES. —JAMES M. INHOFE

Affirmative-action quotas that subvert high training standards historically based on merit and wartime requirements should be ended by executive order. In the tradition of Harry Truman, who promoted social change by ending racial segregation in the armed forces, the next president should insist on policies that judge people as individuals, not as members of groups.

The next president must seek a more sensible balance between the interests of parents, field commanders, and children who stand to lose the most when their mothers are sent to fight a war. Overly generous pregnancy benefits offered without regard to marital status, for example, degrade cultural values while escalating family stress, child-care costs, and non-deployability numbers. Disciplinary problems must be addressed as well, since human emotions do not always respond to military orders.

The Clinton administration has persisted in promoting homosexuality as an acceptable lifestyle, despite the law passed in 1993 intended to exclude homosexuals from the military. The next president should deny the gay agenda, which has gained significant ground in all branches of government, including the uniformed services.

Ronald Reagan, who enlisted but did not serve in the front lines, demonstrated that a pro-defense presidency does not depend on military background alone. In the tradition of Ronald Reagan, the next commander in chief must convey a deep respect for military values, and be willing to defend the interests of the troops against civilian activists with different agendas.

Clinton has tried to convey respect for the military by using soldiers, sailors, and aviators as backdrops for "photo ops." The next commander in chief must earn the respect of the troops by standing on principle, not public relations.

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PAULA J. DOBRIANSKY

The three most important foreign-policy and defense issues of the 1996 elections are America's vulnerability to nuclear missiles, foreign aid, and the extent of America's international engagement, including the use of force overseas.

In a post-Cold War world, a nuclear attack against American territory poses the single gravest security challenge. Despite several strategic-arms control agreements signed over the last decade, Russia retains a large nuclear arsenal. China is also modernizing its nuclear forces. A number of other countries are aggressively developing small, but potent, nuclear forces.

America's failure to deploy ballistic-missile defenses doesn't just perpetuate our national vulnerability. It also greatly weakens our diplomatic prowess. Imagine how different the outcome of the Iraqi invasion of Kuwait might have been if, just as the Bush administration was contemplating its options, Saddam Hussein had informed the world that he had already built a dozen or so nuclear-tipped ICBMs.

Contrary to the musings of traditional arms-control theorists, American ballistic-missile defense deployments are likely to discourage other countries from embarking on the path of nuclear proliferation. I suggest that the candidate inform the American public about our vulnerability to nuclear attack and explain the imperative, including costs, of appropriate solutions. I propose a measured missile-defense program that deploys "brilliant pebbles"-like weapons as its first phase.

The popularity of foreign aid with the American people has reached a nadir. Americans complain, correctly, that significant amounts of U.S. aid have been misdirected, and many object to providing any foreign assistance when we have urgent domestic problems. But foreign aid, if it advances specific U.S. national interests, can be a useful foreign policy investment. I recommend that the presidential candidate begin a candid dialogue with the American people about the merits of a judicious foreign-aid program. While streamilining our foreign aid delivery

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by merging AID into the state department and eliminating wasteful social and developmental programs, I would show how it serves America's interest to use foreign aid to promote democracy and free markets in other countries. Furthermore, U.S. aid should be provided directly to its intended recipients rather than funneled through international institutions.

Finally, the use of American troops in such places as Somalia and Haiti and the speculation that American ground forces may be sent into combat in the former Yugoslavia have reintensified the long-standing debate about the proper scope of America's international engagement and the role of force in support of our national interests.

Presented with these realities, I suggest reestablishing the basic public consensus on this critical national-security issue. The American people need to understand that we must remain a key international player and that our troops should be deployed for combat overseas only when vital American interests are at stake. Once deployed, our troops should be given all the resources they need to prevail in combat *quickly and decisively*. Nothing would be more harmful than the specter of American forces suffering casualties because they either lacked heavy armor (as in Mogadishu), could not engage in an air-defense suppression (as in Bosnia), or were commanded by bungling U.N. officials.

PAULA J. DOBRIANSKY *is the former director of European and Soviet affairs for the National Security Council in the Reagan administration.*

ELLIOTT ABRAMS

There are two foreign and military policy issues that seem to me of greatest significance during the forthcoming campaign.

The first issue is missile defense. The spread of nuclear weapons and missile technology can be slowed but not avoided, for primitive versions of the bomb and of delivery systems are, after all, 50-year-old technology. The bizarre theory of mutual assured destruction and the obsolete Anti-Ballistic Missile Treaty keep us defenseless against all logic, and the time has come to replace them with a policy of defending the country. The more plainly candidates speak about this, the more public support there will be.

The second issue is intervention: When do we risk the lives of our soldiers in crises overseas? This is obviously a complex issue and, with the Cold War over, many Americans (including some candidates) will be tempted to answer: "Never." I would like to see a candidate address this issue in more or less the following manner:

"During the Cold War, we had to lead a coalition of nations against the twin threats of communism and Soviet power. We rose to that struggle and won it, and our victory saved our own freedom was well as the freedom of hundreds of millions of others.

"Now that it is over, we *can* do less and spend less overseas. There are places on the globe that simply don't matter enough to demand American involvement. But just as we had interests to defend before there was a Cold War, and just as there were threats to us before then, the same is true now.

"Some of these interests are very old: The first American statesmen saw what we had at stake in Mexico and the Caribbean; today, drug and migration flows are still major issues. Some interests are new: The spread of nuclear weapons and missile technology now gives small nations and terrorist groups the ability to strike at America. But it is clear that a world in which every petty tyrant is armed to the teeth, and our foreign markets are in turmoil, and our own region is plagued by instability, will not be a very good gift to our children. America still has an irreplaceable role if the world is to be a less dangerous place.

"Why us? Because our wealth, power, and freedom grant us the leadership of the world's democracies. It is true that our power provides a continual temptation to meddle in situations where our interests do not require us to jump in, and one test of a president is to keep his cool and stay out of those.

"But if we are to keep the world moving toward freedom, and protect our freedom, safety, and prosperity, we cannot act as if we lived on some other planet. Another test of a president is to know when our interests really *are* at risk today, and the toughest test is to understand when they *will* be at risk tomorrow if we don't act now. We can pass those tests or fail them, but we cannot avoid them."

ELLIOT ABRAMS, a *former assistant secretary of state for inter-American affairs in the Reagan administration, is a senior fellow at the Hudson Institute's Washington, D.C., office.*

SETH CROPSEY

The overriding foreign-policy issue in the coming presidential campaign is the loss of the strong place America held in 1991—the year of victory in the Persian Gulf War and the formal disintegration of the Soviet Union—and the nation's progressive weakness in international affairs. Do the American people approve of this direction?

Presidential candidates would be wise to reject the conventional wisdom that Americans are uninterested in foreign policy, that their desire to address serious domestic problems comes at the expense of concerns about U.S. influence abroad. Voter confusion is understandable, since no national political leader has explained why Americans should be interested. The task of a challenger is to show plainly what a world bereft of American leadership looks like. This should be at the heart of any conservative presidential candidate's foreign-policy position.

At risk in Bosnia is America's historical commitment to the principle that employing force to seize another country is unacceptable. The current administration has effectively given the U.N. secretary-general veto power over the use of our forces in the Balkans. This failure has neutered U.S. policy there and promises to cripple it in the future.

Up to now, American weakness in Bosnia—as evidenced by years of inaction, and demonstrably poor military advice—has encouraged only one leader (Jacques Chirac of democratic France) to fill the void. But if this administration's incomprehensible Bosnia policy continues, it will eventually embolden some dangerous chal-

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lenger armed with nuclear weapons. The conflict in the former Yugoslavia could also spread throughout the Balkans and beyond. Presidential candidates should remind voters of this century's brutal history and of America's immediate economic and security interest in maintaining a peaceful, prosperous Europe.

To underline the character of excessive multilateralism, the eventual challenger to Clinton in 1996 should use in a political advertisement the videotape of the U.N. spokesman Ahmad Fawzi's press announcement on July 26. That's when he declared that "the secretary-general has decided to delegate the necessary authority [to conduct air strikes against Bosnian Serb positions] to commanders in the field." Insofar as Mr. Boutros Boutros-Ghali really holds the power to decide when American commanders may or may not use force, the challenger should make the current administration's responsibility for this plain. Voters will not be pleased.

America's gyrating policies in Asia for the past three years undermine this nation's general commitment to free trade, as well as its specific commercial and security ties to Japan and the future of its relationship with China. Asia has the fastest-growing economies in the world, and American exports there support more than three million jobs. Blown by domestic political winds, the current administration's policies in Asia have touched every point on the compass. Going to the brink of a trade war with Japan is, politically, perhaps unassailable. But if Japan is true to form, there will be no significant increases in imports of American auto parts by this time next year.

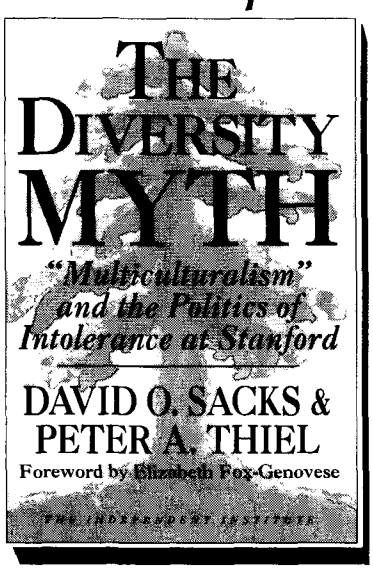
The challenger should exploit this fact. He should call attention to the inconsistency between the administration's support for NAFTA and GATT, and its managed-trade policy towards Japan. He should also note that Japan is slowly becoming more democratic by itself, and that U.S. pressure for managed trade thwarts this evolution.

Finally, the candidate should demonstrate that he will take his responsibility as commander in chief seriously. A missile defense is only one thing that this administration is ignoring in order to keep the military as ready as it needed to be during the Cold War. America now has within its technological grasp the ability simultaneously to reduce defense spending and construct a military that can move swiftly to any part of the world, and from a safe distance wield decisive conventional power. This is the kind of force that we should be building, not a smaller version of the Cold War model. To achieve this, the defense department must shrink the huge and ungainly central bureaucracy it has developed over the years. The candidate will be on firm ground in arguing that the sound political principle of decentralization and returning authority to the states should apply equally to the wise management of the nation's defenses.

It has been years since a presidential candidate said anything about defense except that there should be more of it, or less of it. The candidate who breaks this pattern next year will add to his qualification as prospective commander in chief, and perform for the defense department a vital task that it may not be able to accomplish on its own.

SETH CROPSEY *was the deputy undersecretary of the Navy in the Reagan and Bush administrations.*

"A first-rate piece of reporting and analysis, THE DIVERSITY MYTH is required reading." — **DINESH D'SOUZA**


THE DIVERSITY MYTH
"Multiculturalism" and the Politics of Intolerance at Stanford
DAVID O. SACKS & PETER A. THIEL
Foreword by Elizabeth Fox-Genovese
THE INDEPENDENT INSTITUTE

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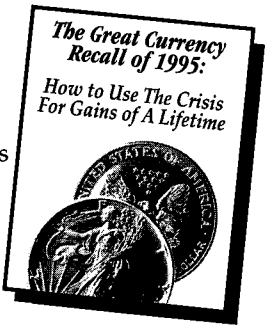

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WATCH OVER THE RAPPAHANNOCK

America Eyes the Virginia Elections

JOEL HIMELFARB

This November, voters in Virginia, New Jersey, Mississippi, Louisiana, and Kentucky will have the opportunity to tell their elected representatives whether they are happy with the new conservative direction in American politics. This represents the first chance since the conservative GOP landslide of 1994 for large numbers of voters to go the polls, so the state races of 1995 will provide the first electoral indication of whether America is entering a period of fundamental political realignment.

One of the most significant bellwethers will be elections for the General Assembly in Virginia. All 100 seats of the House of Delegates and all 40 seats of the Senate are up for balloting, and the ideological differences between the two parties are as clearly defined as in the national congressional elections of 1994. Republican Governor George Allen, elected in 1993, has pushed a wide-ranging agenda to put a more conservative stamp on Virginia government. Splitting mostly along partisan lines, the Democratic-controlled General Assembly has rejected most of his proposals, including tax and spending cuts, school choice, and prison-construction measures.

Allen (who is limited by state law to a single four-year term) says that this year's General Assembly "will go down in history as one of the least productive ever. We sadly saw the Democratic defenders of 'business-as-usual' status quo mount unprecedented party-line defenses against those of us championing positive and constructive change."

IF THE DEMOCRATS LOSE BIG, THEN THEIR NATIONAL PARTY WILL KNOW THE ELECTIONS OF 1994 WERE NOT A FLUKE.

Republicans haven't controlled either house of the Virginia General Assembly in modern times. But recent national and state political trends have given the Democratic leadership in the legislature ample reason to worry. When Douglas Wilder was elected governor in 1989, the Democrats enjoyed majorities of nearly 2:1 in the House, and 3:1 in the Senate. This year, they may lose control of both houses of the General Assembly. In the House, their majority has fallen to 52-47 (with one independent) and their margin in the Senate is just 22-18. Republican success in November could usher in reform on some of the most important issues facing the state and the nation: crime, taxes and spending, education, welfare reform, and the relationship between Virginia and the federal government.

CRIME

From 1988 to 1993, the state's violent-crime rate rose nearly 30 percent, even though the most crime-prone age bracket (15-24) had declined. Felons were, on average, serving just one-third of their sentences. The average individual convicted of first-degree murder, for example, received a term of 35 years but spent just 10 years in jail.

Democrats in the legislature endorsed Allen initiatives to abolish parole and increase prison time by 125 percent for first-time murderers and rapists, to consider violent offenses committed as juveniles when sentencing adult offenders, and to enact truth-in-sentencing legislation. This year, however, the General Assembly voted, mostly along party lines, to provide just one-quarter of the $400 million requested by Allen for new prison construction.

By refusing to appropriate sufficient money, Allen says, his political opponents are putting public safety at risk. "Liberals in the General Assembly," he adds, "are shortchanging prison construction, making it more likely that dangerous criminals will be released early—and back in our neighborhoods." Allen warns that "increasing prison terms, without increasing prison capacity, is precisely the mistake that too many other states have made."

TAXES AND SPENDING

In December 1994, Allen drew fire when he proposed a relatively modest package of tax and spending cuts.

JOEL HIMELFARB, *a Washington writer, formerly covered Virginia's legislature for the* Washington Times *editorial page.*

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Democrats attacked the governor's proposal as a tax "shift" in favor of the rich. They urged taxpayers to send $33 checks to Allen (the average amount a family's taxes would be lowered in the first year, under Allen's proposal) in an attempt to illustrate that Virginians didn't really need lower taxes. What the Democrats did not say, however, was that, by the fifth year, the average family of four, with a $30,000 income, would have saved nearly $1,000 in state taxes under Allen's proposal. Accurate or not, the Democrats' public relations campaign was successful, and the tax cut was killed.

Though Allen's budget proposal cut only $170 million (out of a two-year, $15-billion general-fund budget), the Democrats tried to portray Allen's proposed budget cuts as unreasonable. For example, when Allen proposed eliminating duplicative state agricultural extension programs and high-salaried staff positions, he was erroneously accused of wanting to do away with popular 4-H agricultural programs. Similarly, when Allen targeted "family planning" programs (which were included in, of all places, the agriculture budget), he was attacked for wanting to slash farm spending. The Democrats pushed their own budget through the General Assembly on a party-line vote, restoring $166 million of Allen's spending cuts.

Education Reform

During the recent session of the General Assembly, Allen proposed a new program of charter schools—public schools controlled by teachers, universities, or other groups independent of school boards. Several bills were introduced in the General Assembly, but were killed after Democrats objected. Democratic Senator R. Edward Houck said the concept was aimed at "escaping" regulations. Houck, who is the supervisor of special and vocational education in Fredericksburg schools, denounced charter schools as a "half-baked . . . quick fix" designed to avoid what he said were the real problems confronting public education—too little money and too little parental responsibility.

Allen came under heavy fire from the Democrats for his opposition to accepting $1.7 million in federal funds to implement the Clinton administration's controversial Goals 2000 program. This year, the Virginia House and Senate voted, mostly along party lines, to approve nonbinding resolutions in favor of federal funding for Goals 2000. When Republican Senator Mark Earley and others raised questions about the vague language of the federal regulations that would come attached to the money, their concerns were dismissed by the Democrats and the Virginia Education Association (VEA), a teachers union that supports Goals 2000 strongly. Allen—expressing his concern about the need to retain local control over education in Virginia—announced that the state would not apply for the Goals 2000 money.

Other Allen proposals killed in the General Assembly included mandatory criminal background checks for new school personnel and protection of teachers from frivolous lawsuits for good-faith efforts to discipline students.

The state's sex-education program, known as Family Life Education (FLE), sparked a bitter political battle. The Allen administration supported a bill that would have made FLE an "opt in" program, in which parents wanting their children to participate had to sign up. At present, the burden is on parents who do not want their children in the program to withdraw them. Because of the bureaucratic nature of the "opt out" process, some parents, who thought their children were not participating in FLE, were surprised to find their youngsters were still taking the course. The bill also would also have made FLE voluntary. Democratic opposition killed the legislation in both the House and the Senate.

Allen won a partial victory on another issue: The State Board of Education voted in June to approve a compromise version of more rigorous academic standards in English, math, science, and social studies. The standards were developed by the Governor's Champion Schools Commission in conjunction with parents and teachers. An earlier Allen proposal was bitterly attacked by Democratic legislators, the VEA and other teachers' groups, and a number of PTAs, who claimed the standards were "too demanding." Among other things, they required fourth-graders to be able to summarize the purpose of the Declaration of Independence and U.S. Constitution, fifth-graders to trace the historical background of major world religions, eighth-graders to identify members of the Virginia and U.S. Supreme Courts, and 12th-graders to analyze issues involving state, local and federal governments.

Welfare

At the beginning of this year's session, both the Democrats and the Allen administration introduced their own versions of welfare reform. Led by Senator Joseph Gartlan of Fairfax (the dean of senate liberals), the Democrats sought to cast Allen and his secretary of health and human resources, Kay James, as callously targeting the poor.

Both the House and the Senate approved weaker Democratic welfare legislation earlier this year on party-line votes. Rather than sign it, however, the governor made major changes in the bill, reflecting the details of his original proposal, and returned the measure to the General Assembly. In the end, the Democrats blinked, making just a few technical amendments to Allen's bill. The final version passed the General Assembly by overwhelming margins—90-9 in the House and 33-6 in the Senate—and was signed into law by Allen.

Most provisions took effect statewide in July 1995. The plan includes a "family cap"—denying cash benefits to children born to parents already on welfare—and contains new rules requiring unwed teenage mothers to live with a parent or adult guardian. Welfare recipients' children will be required to attend school, and mothers on AFDC must assist the state in locating absent fathers.

Tough new work requirements are at the heart of the program. The legislation (which is being phased in over the next four years) requires able-bodied adult recipients to take private-sector or community service jobs within 90 days. It places a two-year limit on benefits for most recipients. To ease the transition from welfare to work, the state will provide medical services, child care, and transportation for those who find jobs.

The welfare reform already seems to be having one of its intended effects: Reducing the number of able-bodied

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people on welfare. From 1988 to 1993, Virginia's welfare rolls increased by almost a third. By contrast, from May to July of this year, Virginia's AFDC caseload fell from 74,000 to 69,000 families.

"There is a general cultural shift," says Kay James. "People were beginning to understand that change was coming, and they began to change their behavior as a result." James says recipients have been coming into local welfare offices "where the work requirements have not even been phased in, and saying: 'Look, it isn't worth it. I might as well get a job I like, instead of one you say I have to go to.'" She adds that, in meetings with Allen, local welfare administrators have frequently expressed disappointment that their areas were not among the first round of localities chosen by the administration to implement the new requirements.

Despite the bipartisan votes for final passage, James believes the earlier debate over welfare in the General Assembly illustrates differences between the two parties. "In Virginia, you will hear that 'the Democrats wanted AFDC recipients to work,'" she says. "But what do you mean by 'work'? For the Democrats, that meant being involved in job training—it didn't mean real work." In the General Assembly, she says, the Democrats pushed for "hardship exceptions" to the work requirement that were so broad that the great majority of the adult AFDC population would have been exempted.

In the end, James argues, the Democrats concluded that "we were likely to prevail, and they wanted to be on that train when it left the station."

Federal Mandates

Another difference between the parties involves the Allen administration's repeated clashes with the Clinton administration over federal mandates. In one case, the EPA threatened to strip Virginia of its authority to grant air pollution permits to incinerators, factories, and power plants. The agency claimed the state was in violation of federal law, because it restricted the right of private environmentalist groups to file lawsuits unless they could prove a state permit would cause them a major financial loss.

Virginia later sued the EPA after the agency threatened to withhold federal highway funds. This time, the EPA refused to approve Virginia's vehicle-emissions testing plan, because the state wanted to permit gas stations to inspect and repair vehicles (Washington insisted that inspections and repairs be done at separate facilities.)

Virginians are no longer willing to be "jerked around like serfs," Allen said in announcing the suit, which contends that the EPA's actions violate the 10th Amendment. This year, Allen vetoed a measure, passed by the legislature, which would have implemented the federal "motor-voter" legislation. Virginia Attorney General James Gilmore filed suit, charging the bill was an unconstitutional, unfunded federal mandate. The Justice Department and the Virginia ACLU countersued, and the case is pending.

The U.S. Department of Education has ruled that Virginia public schools cannot expel or suspend disabled students for any reason without guaranteeing alternative schooling. Virginia officials say that special education students who sell drugs, carry weapons, or fight on campus should be disciplined in the same way as other students—which may include unconditional expulsion. The education department claims this violates the federal Individuals with Disabilities Education Act, and has threatened to withhold $58 million in federal funds unless Virginia agrees to change its disciplinary procedures.

Secretary James fought a difficult battle with Donna Shalala, Clinton's health and human services secretary, before winning a federal waiver allowing Virginia's welfare reform program to take effect. Shalala had initially demanded that Virginia directly provide child care and transportation to welfare recipients making the transition to work. Virginia fought successfully to retain the option of having the services provided by churches and other private groups.

The Moderate Republican Factor

Even if Republicans win enough seats to form a majority, it won't necessarily mean smooth sailing for Allen's legislative proposals. Just as in the U.S. Senate, GOP moderates will tend to put up obstacles to conservative proposals.

Since Allen took office last year, Republican lawmakers from Northern Virginia have, on occasion, joined with the Democrats to thwart key administration initiatives. For example, Senator Jane Woods teamed with the Democrats in working to defeat Allen's proposal to reform the FLE program. When Allen's Champion Schools Committee proposed toughened academic standards for social studies, the first draft was blasted as "an unmitigated disaster" by another Republican lawmaker, Delegate James Dillard.

Delegate Vincent Callahan, one of the most senior House Republicans, joined with developer John "Til" Hazel, scores of other prominent businessmen, and Gartlan in a "bipartisan" plan to increase spending on roads, technology, and public education by hundreds of millions of dollars. The group (many of its members are Republicans) wants to pay for the new spending through a combination of new tolls, bonds, and new gas or sales taxes. It has been circulating the proposal to legislative incumbents and challengers in Northern Virginia. The plan is viewed as a slap at Allen, who has refused to consider increasing taxes.

In general, Virginia voters have rarely faced as clear-cut an ideological choice between parties as they do this year. Governor Allen may have lost most of his legislative battles to date. But by defining boldly what he and his party stand for, he has sharpened the issues of the election and given the citizens of the Old Dominion a set of clear choices for the direction of the state.

The consequences will go beyond Virginia. If the GOP does not take a majority in at least one house of the Virginia General Assembly, then it could be premature to say America is entering a period of conservative governance. And if the Democrats lose big, their party will know that the elections of 1994 were not a fluke, and that liberal dominance of American politics may be over.

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How Green Was My Balance Sheet

The Environmental Benefits of Capitalism

JOHN HOOD

Profit and the environment are supposed to be enemies. Remember that the next time you visit Yellowstone National Park, one of the crown jewels of the national park system and a popular attraction for tourists, backpackers, and amateur botanists, zoologists, and geologists. Yellowstone boasts some of the most breathtaking sights in all of North America. It also boasts an interesting capitalistic pedigree.

It was the Northern Pacific Railroad, a private corporation, that funded early expeditions to the Yellowstone region and helped establish the Yellowstone National Park in 1872. "Because it provided the main form of transportation to the region," report economists Terry Anderson and Donald Leal, "the railroad could profit from preservation of this scenic wonder and therefore had an incentive to preserve it." Many other Western parks were promoted and protected by private railroad and development companies for the same reason.

More recently, some private timber companies have found that, by exploring other uses of the forest lands they own, they can increase their profits. In International Paper's commercial forests in Texas, Louisiana, and Arkansas, company biologist Tom Bourland implemented a fee-based recreation program to make money from *not* harvesting trees. His program charged hunters for access and leased small tracts of land on which families could park their motor homes and enjoy the woods. After three years, International Paper saw its revenues from the program triple, constituting 25 percent of its total profits from the area. Since this valuable use of private land relied on beauty and diverse wildlife rather than ease of harvest, the company had an incentive to preserve habitat for white-tailed deer, wild turkey, fox, squirrel, quail, bald eagles, and red-cockaded woodpeckers.

Deseret Land and Livestock pursued a similar strategy when its cattle ranch fell on hard times. The firm's managers decided to invest in wildlife habitat, charging hunters for the right to hunt elk and other animals. Herds of elk and mule deer—now a valuable commodity—on Deseret land actually grew, and the company thrived. The 1,289-square-mile King Ranch in south Texas now makes 60 percent of its income from business activities other than cattle—including revenues from hunters and nature lovers.

Within the corporate social-responsibility movement, there is no more important issue than environmentalism. Often, the call for corporate responsibility and the exhortation to "save the planet" from a host of environmental problems seem virtually to be the same thing. The firms most often honored for their responsibility—such as the Body Shop, Patagonia, and Ben and Jerry's—usually exhibit some sort of (highly publicized) commitment to environmental goals. "Corporations, because they are the dominant institution on the planet, must squarely face the social and environmental problems that afflict humankind," states Paul Hawken, a founder of Smith and Hawken catalog company. "How," he asks, "does business face the prospect that creating a profitable, growing company requires an intolerable abuse of the natural world?"

The notion that profit and ecology must be at loggerheads, and that businesses must place environmental obligations above economic ones, is but one viewpoint among social-responsibility advocates. A different notion, championed most famously by Vice President Al Gore, is that doing business in an "environmentally friendly" way is also to increase the profitability of firms. "We can prosper," he wrote in his book *Earth in the Balance*, "by leading the environmental revolution and producing for the world marketplace the new products and technologies that foster economic progress without environmental destruction."

When you think through the complex issue of corporate environmental responsibility, however, neither Hawken's "win-lose" proposition nor Gore's "win-win" proposition ultimately satisfies. Both have merit, but ignore the most important characteristic of environmental ethics: uncertainty. For Hawken, the fact that the world is headed for catastrophe is scarcely debatable. Only if you buy his apocalyptic predictions about overpopulation, global climate change, deforestation, and depletion of natural resources does his recipe for a low-growth, heavily regulated, "sustainable" economy make any sense.

In Gore's case, he makes no conceptual distinction between profiting from innovation and profiting from

JOHN HOOD, *a Bradley Fellow at The Heritage Foundation, is writing a book for the Free Press on social responsibility and American business.*

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regulation. Throughout much of his book, he argues that governments should make environmental regulations more strict, repeating many of the doomsday scenarios of which Hawken is fond, but then concludes that American firms can make money designing technologies to meet the higher standards. This is no doubt true, but it ignores the firms—actually shareholders, workers, and consumers—who clearly lose when regulatory standards change.

Innovative compliance might reduce the cost of regulation, but it doesn't eliminate it. For example, a state might decide to require that only cars fueled by electric batteries will be sold within its borders. This might well lead to the development of better, cheaper electric cars, as firms struggle to capture as much as they can of the new automobile market, but that's not the only consideration. Under the mandate, consumers would lose access to the products they prefer. Some individuals and businesses would leave the state entirely. The resulting costs and dislocations would far exceed the environmental benefits of lower auto emissions, which are questionable in any event. (The generation of electricity for the cars, for example, would still produce some air or water pollution.)

Gore, in other words, is essentially arguing that it's worth building a better mousetrap, regardless of how many mice you think may be actually running around in your house. But what if the more pressing problem you face in your home is termite infestation? Then the mousetrap doesn't help you.

In a different sense, though, Gore is on exactly the right track in charting a course for corporate responsibility on environmental matters. Corporations are not governments. They are not charities. They are unlikely to be successful if they pursue the same sorts of strategies that governments and philanthropic organizations use to protect wildlife habitats and promote clean air and water, such as setting and enforcing standards of health and safety for the public. Corporate America's unique contribution to solving real environmental problems will come from innovation—finding new ways to produce goods and services, package and deliver them to consumers, and dispose of or recycle the wastes generated by their own production or by consumption.

All illustrations by Charlene Rendeiro

Pollution and Profits

Corporate innovation in the pollution-reduction area is already widespread. The "Pollution Prevention Pays" program begun by Minnesota-based 3M in 1975 has reduced the company's emissions by more than a billion pounds while saving $500 million.

"At our company, we view a good portion of the environmental problems most talked about today as symptoms of an underlying disease," said 3M chairman Livio D. DeSimone. "That disease is waste—the wasteful and inefficient utilization of our resources."

Similarly, Dow Chemical and Westinghouse have implemented waste reduction strategies that have saved millions of dollars since the mid-1980s. One Westinghouse plant in Puerto Rico reduced "dragout"—the contamination accidentally spread as chemicals flow from one tank to another—by 75 percent by shaking the tank to remove solids before releasing the chemical on to the next tank. Chevron saved $10 million in waste disposal costs and reduced hazardous waste by 60 percent in the first three years of its "Save Money and Reduce Toxics" (SMART) program.

Over the past few decades, timber companies have found that "sustainable-yield forestry"—including preventing fires, spraying for pests, and quickly replanting harvested areas—produces less waste and higher profits while also preserving habitat for wildlife. In addition, they have reformed their manufacturing processes, for example by using leftovers from lumbering to make paper pulp and to generate steam for paper mills. International Paper saved about $100 million in disposal expenses between 1988 and 1995 by recycling and reusing its manufacturing wastes.

To be successful both at saving money and "saving the planet," however, corporate waste-reduction programs can't be based on rhetoric or ideology or guesswork about what is or isn't environmentally friendly. One of the greatest myths propagated by the corporate social-responsibility movement is that the most environmentally friendly way to produce goods and services is already known, and that all corporate executives need do is embrace the environmental ethic. This is untrue. Often, the consequences of corporate decisions are ambiguous in terms of overall affect on species, health, air, and water quality, and the global environment. In some cases, the very practices advocated by environmental activists harm the environment.

Consider the historical example of the automobile. Given the attention paid to air pollution and oil spills, one might believe that the environment would be better off if cars had never been invented and mass-produced for widespread use. But such a judgment would be hasty. Although cars created a new source of air pollution, they also virtually eliminated one of the oldest sources of air and water pollution known to man: animal dung.

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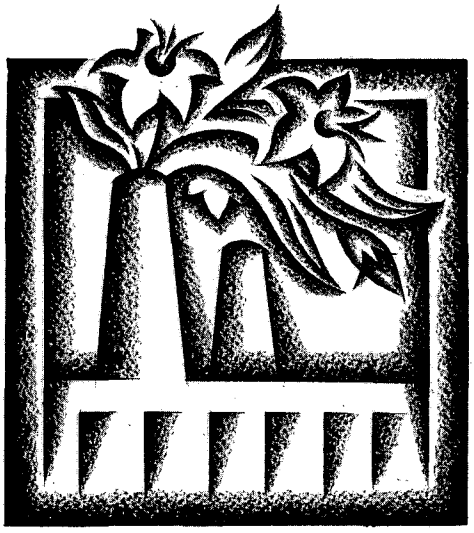
A horse, for instance, produces about 45 pounds of manure each day. In American cities before the advent of automobiles, massive amounts of horse manure collected daily on streets, sidewalks, and public property. The resulting mess fouled the air, and contaminated water and food. It had to be collected and dumped or buried, often at great expense. And the horses died. In the late 19th century, New York City had to dispose of some 15,000 dead horses a year. Sometimes this difficult task wasn't performed as quickly as it should have been, resulting in outbreaks of disease.



In 1885, a British writer described London in the supposedly pristine days before the car. "It is a vast stagnant swamp, which no man dare enter, since death would be his inevitable fate. There exhales from this oozy mass so fatal a vapor that no animal can endure it. The black water bears a greenish-brown floating scum, which forever bubbles up from the putrid mud of the bottom. . . . It is dead."

Fred Smith, the president of the Competitive Enterprise Institute, in Washington, D.C., and a former environmental regulator, notes that the automobile swept away many of these environmental problems. Besides reducing the need to deal with horse and draught-animal wastes and corpses, the car "encouraged developments that reduce air pollution," he observed in *Reason* magazine. Before the automobile, most urban homes and businesses were heated with coal, an extremely dirty source of energy that spewed sulfur dioxide, particulates, and toxic ash into the air. As the demand for gasoline stimulated oil exploration, heating oil and natural gas became cheaper and more readily available.

Did the inventors and early manufacturers of the automobile perceive its potential environmental benefits? Have General Motors, Ford, and Chrysler been run by environmental activists for the past half-century? Hardly. Their environmental records are mixed. Nor have all the environmental problems created by the human need for transportation and fuel been "solved"—particularly in those unique areas, such as southern California, where topography and climate make auto emissions, regardless of how numerous their source, a continuing problem. The automobile example shows only that economic decisions, motivated by an insatiable demand for higher productivity, lower costs, and bigger profit margins, can have unforeseen benefits for third parties and the environment.

It's Not Easy Being Green

One problem for corporate managers is that years of apocalyptic rhetoric and breathless media coverage have created environmental illiteracy among many Americans, including potential consumers and employees. When McDonald's first began to research whether its plastic "clamshell" hamburger boxes posed a significant waste-disposal problem, company scientists came to the conclusion that paper wrappers would actually be harder to recycle. But in a well-publicized 1990 decision, the restaurant chain nevertheless switched to paper.

The reason wasn't sound environmental policymaking, but public relations. A letter-writing campaign organized by environmental activists and teachers had schoolchildren across the country telling their favorite fast-food outlet (and their parents) that they wanted paper rather than plastic to "save the planet." McDonald's complied. Subsequently, a study in *Science* concluded that the plastic alternative was less environmentally harmful, once all the relevant costs—such as the energy expended to make the paper wrappings—were factored in.

Not only did McDonald's appear to make the environmentally "wrong" decision, but the company also nipped a promising business venture in the bud. Before the paper-packaging decision was announced, Dow Chemical and seven other plastic manufacturers had formed the National Polystyrene Recycling Company to recycle polystyrene from 450 McDonald's restaurants. The switch to paper nixed the deal, which would have advanced plastics recycling.

The effect of corporate decisions on the environment are, in other words, extremely difficult to predict with accuracy. Corporations pursuing profit have as much chance of generating environmental benefits as regulators or environmental activists do—particularly when they are faced with prices for waste disposal that are as close to cost as possible.

For natural resources over which property rights are relatively easy to establish, such as oil, minerals, or timber, prices serve as an early-warning signal to companies about scarcity. If the price is rising, that suggests more demand for the resource than can be met by available supply. Companies then have a financial incentive either to find new supplies or to reduce its need by developing alternatives or ferreting out waste. This market process amounts to a sort of ongoing environment research project seeking an answer to this question: What is the most efficient and least resource-depleting method of producing the goods and services people need?

A good example of how this process works can be found in the development by Bristol-Myers-Squibb of a new way to make Taxol, a treatment for ovarian and breast cancer. Taxol had been made from the bark of the endangered Pacific yew tree, but the process killed the tree. Responding to the mounting cost of obtaining Pacific yew bark, the company found a way to make Taxol from the needles and twigs of the more common Himalayan yew tree, thus assuring a continued supply of Taxol while reducing the need to harvest the endangered species.

For resources over which property rights haven't been established, either because of technical difficulty or because of bad public-policy decisions, the pricing system

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doesn't work as well. When governments relieve corporations of the need for pay the full cost of disposing of waste, for example, by operating and subsidizing waste collection, landfills, incinerators, and recycling programs, they reduce the incentive for those corporations to find alternative methods that produce less waste.

Environmental Surprises

Some ecological benefits come from surprising places. Man-made pesticides and the companies that produce them, for example, are often reviled for the risks they supposedly pose to humans and habitats. But according to Dennis Avery, the director of global food issues for the Hudson Institute, the Herculean efforts by American companies and researchers to make farming more productive—by introducing insecticides, herbicides, crop-breeding, and genetic engineering—have reduced the need for farmland in the United States and other countries. Besides lowering the real price and improving the quality of the foods consumers buy, this happy result has had the side-effect of protecting forests and other sensitive habitats from being cleared for agriculture. "Today's typical environmentalist worries about how many spiders and pigweeds survive in an acre of monoculture corn without giving environmental credit for the millions of organisms thriving on the two acres that didn't have to be plowed because we tripled crop yields," Avery comments.

Actually, reducing the price and improving the quality of agricultural produce has had its own salutary effects on human health. Throughout human history, most people in most societies have had little to eat. Starvation has until recently been the typical state of much of the Earth's population. Only within the past century, and especially since the early 1900s, has agricultural productivity increased rapidly enough to guarantee a plentiful supply of food at affordable prices in developed countries.

Much of this productivity is due to the invention and production of agricultural chemicals and the development of new farming practices by American entrepreneurs. Even today, herbicides and pesticides make fruits and vegetables cheaper and more attractive. One study by Texas A&M University researchers found that without pesticides, potato yields would drop 50 percent, orange yields by 55 percent, and corn yields by 78 percent. Prices for these commodities would rise tremendously without pesticides.

Companies introducing these agricultural innovations have clearly advanced the interests of their shareholders, too. The Monsanto Co., founded in 1901 to produce saccharin in competition with German firms, has since diversified into chemicals, fibers, plastics, and pharmaceuticals. Two of its most profitable products for the past 30 years have been the popular herbicides Lasso (introduced in 1969) and Roundup (1973), one of the best-selling agricultural products of all time. Monsanto continues to introduce new products to increase agricultural productivity, such as Posilac, which boosts milk production in cows and reduces per-unit consumption of feed grains.

CORPORATE AMERICA'S UNIQUE CONTRIBUTION TO SOLVING REAL ENVIRONMENTAL PROBLEMS WILL COME FROM INNOVATION.

Plastic Pleasures

If anything symbolizes the irresponsible corporation in the minds of many theorists, it is the manufacturer of that epitome of 20th-century wastefulness, plastic. Typically made from oil, a nonrenewable resource, plastic has come to represent everything that is wrong with American commercial life and our "throwaway culture." But is plastic really a significant environmental problem? Does it provide no benefits to human health and safety or the environment that need to be weighed?

William Rathje, a professor of archeology at the University of Arizona, has spent years studying solid-waste disposal patterns. His excavations of landfills have found that plastics make up about 7 percent by weight and 16 percent by volume of the typical landfill—much less than paper or yard waste. Polystyrene plastic, used in drinking cups and those "clamshell" hamburger containers McDonald's abandoned, makes up only 1 percent of landfill volume. Fast-food packaging amounts to no more than one-third of 1 percent. Of course, environmentalists fault plastic for much more than taking up space in landfills. They point out that plastic manufacturing relies on extracting and transporting oil. But since less than 2 percent of the world's petroleum is used to produce petrochemicals of all kinds, from fertilizers to plastics, the impact on oil consumption of using plastic to make consumer products is negligible.

Consider, on the other hand, the benefits of plastic. Even something as banal as plastic wrap has been a tremendous boon for Americans' health and safety. A hundred years ago, grocery stores had little in the way of prepackaged foods. At the turn of the century, paper packaging began to enter food retailing, but it had limitations. Meat, for example, was still often shipped in the form of whole carcasses only 50 years ago. Consumers would request particular cuts of meat from butchers, who kept carcasses until they were all sold or completely spoiled. The meat was expensive, particularly because butchers spent so much time carving it.

During the 1950s, however, the advent of plastic packaging began to change food delivery. Dow Chemical of Midland, Michigan, was an industry leader, not only in supplying plastic products to businesses but also by introducing its first major consumer product, Saran Wrap, in 1953. Plastic packaging allowed grocers to sell smaller portions at lower prices, and consumers to store food more efficiently and effectively. One study estimates that the modern system of packaging lowers the price of beef by about 40 cents a pound, while improving its quality.

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Furthermore, the use of plastic and other types of packaging for foods seems to have reduced, not increased, total household waste. When Rathje took his garbage-archeology team to Mexico City in 1990, they found that the average household there discarded 40 percent more refuse each day than the average U.S. household, because Mexicans ate more whole fruits and vegetables and thus had more rinds, peels, and other food debris. In America, food processors sell prepackaged fruits and vegetables in cans, bags, or microwaveable plastic containers. From an environmental standpoint, this has the effect of accumulating the food debris in a central location, thus making it easier to dispose of in the form of compost, animal feed, and other products.

Today, the American plastics industry is one of the most innovative in the world. By finding new ways to manufacture, package, and store products that cost less, last longer, require fewer resources, and reduce harm to the environment, the industry is constantly improving the way we live. Since World War II, innovations in the manufacture, design, and use of plastics have yielded tremendous benefits for the public in terms of safety, health, economy, and quality of life. Consider these examples:

- Plastic tubing made possible the first disposable, ready-to-use hypodermic needles. Initially introduced for combat use in the 1940s, the disposable needle soon made it possible to conduct safe and effective mass inoculations against disease in America and throughout the world.
- In 1945, Earl Tupper introduced the first flexible plastic storage containers to replace glass, earthenware, and metal containers for storing food and other perishables. His product, Tupperware, vastly improved the freshness and quality of stored food.
- Plastic siphon tubing made mass irrigation possible in the 1940s and 1950s, thus contributing to the Green Revolution that increased agricultural productivity and eliminated famine in much of the world. In the 1960s, plastic pipes began to replace other forms of piping for water distribution and drainage, because they were lighter and easier to install and resisted corrosion better than alternatives.
- Plastic innovations during the past three decades by such companies as Phillips Petroleum, Union Carbide, and Shell Chemical have made possible such life-saving and life-enhancing products as artificial organs, comfortable prosthetics, body armor for law-enforcement personnel, unbreakable but light children's toys, and many automotive parts.
- Cheap, all-temperature performance, flame-retardant, high-impact-resistant plastic parts made the first home computers—manufactured by Apple Computer and Tandy—viable products.

Lingering environmental controversies such as the risks of dioxin—which many view as a potent human carcinogen—are being resolved by plastic designers who, just in the past few years, have developed products that reduce or eliminate these real or perceived environmental problems. GE Plastics, for example, developed a new flame-retardant product that doesn't produce dioxin and that is also easier to make and costs no more than the plastic it replaces. Apple Computer is using the product in its Macintosh line of personal computers. Waste-to-energy plants, which dispose of about 60,000 tons of refuse each day and supply electricity to nearly a million Americans, also employ a series of technologies that reduce dioxin emissions to almost immeasurable levels.

PLASTICS ENABLE COMPANIES TO MAKE, PACKAGE, AND STORE PRODUCTS THAT COST LESS AND USE FEWER RESOURCES.

The Recycling Conundrum

An article of faith among environmental advocates is that recycling will help American business conserve natural resources and demonstrate its environmental responsibility. This assumption doesn't account for the potential costs, including environmental costs, of pursuing recycling regardless of whether it is truly profitable.

For example, curbside recycling programs usually require more collection trucks. That means more fuel consumption and engine emissions. Some recycling programs produce high volumes of wastewater and use large amounts of energy. When researchers have tried to examine every aspect of the recycling equation—from energy use to production costs—they have found that sometimes recycling makes sense from an economic and environmental standpoint, while other times it does not.

Aluminum cans are a clear example of a commercial package that should be recycled. It takes 10 percent less energy to recycle aluminum than it does to make it from mined bauxite. So aluminum recycling is profitable—and commonplace. Steel is also relatively economical to recycle. Virtually all products made with steel contain at least 25 percent reclaimed steel. On the other hand, recycling fruit-juice containers probably doesn't make economic *or* ecological sense. Filling disposable cardboard boxes takes half as much energy as filling recyclable glass bottles. For a given beverage volume, transporting the empty glass bottles requires 15 times as many trucks as does transporting disposable boxes. Transporting the containers once they are filled also costs less when using disposable boxes. Juice boxes don't break like glass bottles can, they are easily packed or frozen, and they seem to encourage juice consumption among the young, with whom they have proven to be popular.

For some commodities, such as newsprint, it seems that the only way to make recycling profitable is to force manufacturers to use them. Many states have laws requiring that newspapers contain a certain percentage of recycled paper, thus artificially creating a demand for newsprint. Even mandates sometimes fail to make recycling work: In Germany, laws requiring plastics recycling have resulted in a glut of collected plastics with few economical uses.

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Advocates for such laws point out that market prices don't capture all the costs of alternatives to recycling. But prices nevertheless contain important information. When forest stocks become scarcer, for example, the price of virgin timber rises, thus making recyclables more attractive. Similarly, as long as landfills are run to at least break even, then as they fill up their tipping fees will rise, again encouraging diversion of waste products into recycling or reuse. These price mechanisms already exist to a significant degree, and yet paper and plastic recycling often makes no sense absent government mandates.

For corporate managers trying to make heads or tails of the economic and environmental issues surrounding recycling, the answer may well be to trust an imperfect system of market prices over an even more imperfect attempt to *guess* at the ecological impact of various waste-reduction and recycling strategies. In everyday decisionmaking, this means weighing costs and benefits while maximizing shareholder return.

Ford saved millions in 1994 when it converted several components of its automobiles into 100 percent recycled plastic. Chrysler is using completely recycled plastic in the interior trim of its popular minivans. Both car companies have made increasing use of these recycled plastics, made by companies such as Washington Penn Plastics and AlliedSignal, because of their cost and performance advantages over "virgin" plastic, not because of an attempt to meet some vague environmental goal. The savings "go straight to the bottom line," said Tony Brooks, Ford's special recycling coordinator. "Ford's position is that we will do everything we can to use recycled materials in our cars, but they can't cost more than virgin and they must perform at least as well as virgin."

Problem, Innovation, Solution

Most environmental issues in America today represent not only public-sector controversies but also private-sector opportunities. For companies that can identify a problem and devise a solution, the potential profits are significant.

In the case of plastics, profit-seeking corporations are experimenting with *edible* food packaging that offers better protection, lower cost, and few environmental considerations. ConAgra, Inc., the processed-food giant, is working on an edible bag in which to package products such as frozen entrees that currently used plastic bags. "If you could make a boilable, edible bag, you could replace the plastic with something that is part of the food—ultimately eliminating a source of package waste," says the company's packaging director, Brian Hopkins. Other companies are working along similar lines. Quaker Oats is testing edible coating for breakfast cereals. RJR Nabisco is working on a film made from milk protein that could be used to coat frozen fish products and baked goods.

These innovations aren't being pursued simply to reduce package waste. Food manufacturers also want to improve food preservation to enhance the taste and freshness of their products. Instead of having consumers buy whole fruits and vegetables, for example, and then slicing or dicing them at home, manufacturers could prepare large quantities of fresh produce—such as pre-sliced onions or oranges—and then preserve them with edible coatings. The cost of the foods would be lower, consumers could enjoy the convenience of pre-sliced ingredients, and waste peelings—currently spread out over the entire population of homes—would be centralized in manufacturing facilities and thus easier to dispose of. The resulting boon to human health would be significant. "Consumption of fresh fruits and vegetables could be higher if this service were provided," says Attila E. Pavlath, a food scientist with the U.S. Department of Agriculture.

Other corporations are focusing their innovative energies on hazardous waste spills, hoping to profit from creative solutions to this most serious of environmental dangers. Whether it is the *Exxon Valdez* oil spill of 1989 or Superfund sites or underground leakage of cancer-causing chemicals, the topic of hazardous waste often generates passionate feelings and great concern about environmental damage. But is the answer to spills to be found in banning substances or jawboning industry to reduce its dependency on them? Many entrepreneurial U.S. companies say no.

The answer, they suggest, is to find new ways to clean up spills quickly, easily, and effectively. Bioremediation—using bacteria or fungi either found in nature or engineered in laboratories to clean up hazardous wastes—is a promising technology that offers the prospect of a cleaner economy without sacrificing the modern industrial processes that make our so economy productive. In Seattle, UNOCAL is using petroleum-eating bacteria to clean a six-acre patch of dirt where an oily residue of gasoline and disease fuels had accumulated over 65 years of leaks from its Seattle Marketing Fuel Terminal. Once the site is clean, UNOCAL expects to sell it for a significant price to commercial or residential developers.

Bioremediation isn't exactly a new idea—municipal water systems have long used bacteria to purify sewage and paper companies have used them to remove organic matter from industrial sludges—but a bustling new industry of bioremediation enterprises promises to clean up such hazardous materials as DDT, wood preservatives, toxic petrochemicals, and radioactive waste. Corporate pioneers in the area include Amoco and Du Pont, but most of the new technologies are coming from small, start-up firms such as Remediation Technologies of Concord, Massachusetts, Alpha Environmental in Austin, Texas, and Envirogen of Lawrenceville, New Jersey. Ironically, many bioremediation approaches have come from a close observation of how Mother Nature herself deals with waste. In searching for microbes to clean up oil spills,

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Alpha Environmental president Eugene Douglas said, "we went to where there are natural oil seeps in the Mediterranean, Central Asia, and North America, but where there isn't what you'd call pollution. Over time, microbes at these sites have evolved the ability to ingest that oil."

Bioremediation isn't the only solution profit-seeking corporations are working on. For the problem of oil spills, for example, Sea Sweep, Inc. of Denver, Colorado has developed an oil-absorbing, floating material, made from heating sawdust and woodchips, that will absorb 3.5 times its weight in oil. If administered to a spill, Sea Sweep will absorb the oil and then float to the surface for easy collection, after which it can be burned as fuel. Wyoming-based Centech has developed a centrifuge that generates relatively clean water and marketable oil from oil sludge, which is a serious problem around crude oil storage tanks and pipelines. In the area of industrial wastes, Tennessee's Olin Corp. has developed a process for dramatically reducing absorbable organic halides (such as dioxin) from the paper pulp-bleaching process. Martin Marietta Energy Systems, Inc. has a process for dechlorinating wastewater streams.

It would be impossible to list all of the environmental innovations and inventions one can find in just a single year, ranging from simple reuse technologies at plant sites to machines and acids that remove virtually all known pollutants from energy plant emissions. Some of these technologies have been developed, as Gore suggests, in response to regulatory mandates. Others have come about as companies seek to reduce their waste disposal costs, improve the efficiency of their production processes, or find new areas of opportunity in a growing, constantly changing economy. It is through innovation and productivity gains, not through corporate munificence or a commitment to a theoretical environmental ethos, that American business will make its most important contribution to a cleaner world and the health and safety of the public.

For corporate decisionmakers, true responsibility entails a recognition of the uncertainty that often accompanies environmental controversies and an unwillingness to put the interests of shareholders at risk by accepting environmental "truisms" at face value. It is by no means clear that simply recycling more, or substituting paper for plastic, or abandoning profitable enterprises because they require nonrenewable resources will necessarily serve environmental ends. Ultimately, such ends are determined and valued by human beings who also value healthful and reasonably priced foods, high-quality consumer goods, and job opportunities. The chances of making a poor decision are higher when corporate managers try to act like public policymakers or conservation experts.

RESEARCH REVEALS THAT RECYCLING SOMETIMES MAKES NO SENSE FROM AN ECONOMIC AND ENVIRONMENTAL STANDPOINT.

Instead, as much as is practicable, corporations should let prices guide their decisions. In most cases, wasteful industrial practices impose measurable costs on firms, be they for waste disposal, raw-materials purchases, or lost customer revenue. Thus firms have every incentive to find alternatives. "For all environmental issues, shareholder value, rather than compliance, emissions, or costs, is the critical unifying metric," said McKinsey & Co. management consultants Noah Walley and Bradley Whitehead in their noted 1994 essay on corporate environmentalism in the *Harvard Business Review*. "That approach is environmentally sound, but it's also hardheaded, informed by business experience, and, as a result, much more likely to be truly sustainable over the long term."

An example of how truly responsible companies might make decisions about environmental issues is the case of Eco-Foam pellets, a substitute for Styrofoam peanuts in packing boxes or other containers. Texas-based American Excelsior Co. makes Eco-Foam out of corn starch and markets it as environmentally friendly. "The biggest benefit is that it's manufactured from renewable resources instead of petroleum products," says one local distributor. Should responsible companies concerned about the global environment use Eco-Foam instead of Styrofoam, then? Probably not. Managers need not evaluate all the pros and cons of the two products. They need only watch the price. In early 1995, Eco-Foam cost 25 percent more than Styrofoam. If we ever really start running out of oil, the price of petroleum products, including Styrofoam, will rise—making alternatives competitive. Until then, the environmental benefits of switching to corn starch won't be worth the cost.

Public policymakers will continue to develop more efficient ways to regulate waste and pollution, and scientists will continue to gather information about the environmental risks from various substances or practices. As they do, pricing structures will evolve that communicate even more accurate information to manufacturers and entrepreneurs about the true cost of commercial activities and the potential rewards from innovative solutions to environmental problems.

There are many promising trends in environmental thinking and regulatory policy, from markets for emissions permits to the increased use of cost-benefit analysis to establish public priorities. Once ecological and economic ends are brought closer together, the perceived clash of interests between American business and Mother Nature will largely disappear. For corporations, the complex issues of environmental responsibility will always be challenging. But dealing with them requires no redefinition of the core profit-seeking purpose of economic enterprises.

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STEWARD LITTLE

Which Land Trusts Can You Trust?

R. RANDOLPH RICHARDSON

The public places great faith in national conservation groups to preserve ecologically valuable land. Uncritical news coverage and slick fundraising campaigns have something to do with this. But nature-lovers and property owners should be aware that local community-based land trusts are often better stewards of land and more interested in managing land for the enjoyment of the local populace. Unfortunately, many citizens involved in land preservation are unaware of the distinctions.

I learned this lesson through bitter experience. My dad once owned 74 acres in Westport, Connecticut. In 1970, when he was 84, he asked me to help him decide how to preserve the land for the enjoyment and education of his neighbors. He wanted the Christmas trees he'd planted sold to help pay for planting native hardwood, shrubs, and grasses. He wanted trails with plant life identified and education programs for kids. Eventually he chose the Fairfield Chapter of the Connecticut Audubon Society (not affiliated with National Audubon) to carry out his vision because it agreed to do most of what he thought important.

In 1990, 18 years after Dad's death, I discovered Audubon had done nothing it had agreed to. The Christmas trees were 35 feet high and covered with thick bittersweet vines that threaten to kill them. The land was overgrown and untended, and locked gates barred public access. At the Audubon office, I pointed out that densely planted spruce trees provide almost no food and nest sites for birds (except for predatory owls and hawks that eat other birds). The young staffer ignored me and nattered on about a rare hawk seen on the site recently.

Audubon's officials brazenly cited lack of funds for their failure to fulfill the contract. Yet one of the parcels was a Christmas tree farm whose profits were flowing mainly to a former Audubon employee. As far as I could see, not a penny of Audubon's share was being spent to maintain the balance of the 74 acres.

Over the years, I've learned that there are large differences between the practices of national landholding trusts like the Nature Conservancy, the Trust for Public Land, and National Audubon Society and those of the local trusts. There are exceptions to my generalizations, and some local and state chapters with famous brand names are not affiliated with their national namesakes, but may operate as most of the nationals do. The national environmental organizations and their affiliates tend to:

- Follow the thinking of John Muir, a talented nature writer and a founder of the Sierra Club. Muir believed wilderness is best left alone because man can only degrade it. The Muir doctrine, however, has no basis in science. The nationals' philosophy of land management amounts to nonmanagement. And this nonmanagement saves millions of dollars that they can devote to fundraising, salaries, perks, etc.; as the inspector general of the Interior Department points out, the nationals are businesses.
- Limit public access by cutting few trails, allowing ground vegetation to become impenetrable, preserving parcels of land that are bounded entirely by private property, and declaring land off-limits under the Endangered Species Act and other federal legislation.
- Lobby the federal government to manage land their way and to lock away ever more land under the Endangered Species Act, wetlands regulations, and similar laws. Many professional foresters think that such promotion of the Muir philosophy of land management results in more disastrous fires in national parks, like the notorious Yellowstone fire in 1989.
- Engage in the highly profitable business of selling land to the federal government, particularly to various agencies within the Department of the Interior (see sidebar).

Local land trusts, with some exceptions, tend to:

- Use what science-based management they can afford.
- Allow public access and seek multiple uses for preserved property, including recreation, preservation, education, and in some cases sensible, sustainable logging.
- Seek members among their local communities.

For those with experience of wildlife and land, the differences in management philosophy are not abstract. A few vignettes illustrate this. I have visited eight sites owned by nationals. Three were within homeowners' associations, forbidding public access. A fourth had soil beloved by dense ground cover, ensuring no sunlight for tree seedlings. The land could remain an impenetrable wilderness for centuries until wildfire cleared the ground. A

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fifth, 20.3 acres, is prone to saltwater intrusion in hurricanes and off-limits to the public. An expert on the rare orchid growing there suggested that since each plant produces 10,000-plus seeds, real protection of the species lies in trying to grow it elsewhere. Maybe Congress needs to ask that question next time it's lobbied to lock away land for an endangered something.

In northeast Connecticut, by contrast, there's a young local trust busily acquiring land. Each new tract is surveyed by state or private forestry professionals. The resulting plans are masterpieces of knowledgeable, applied ecological sciences. Black birches, a disease-prone species there, are to be killed by girdling their trunks, making room for heartier stock. "Patch cuts" (small areas where trees are cleared for the planting of shrubs and grasses) are made to provide food for small mammals and to protect fledgling birds from hawks. This trust also organizes demonstrations for local landowners of some of the techniques they can apply on their land.

An established trust in northwest Connecticut owns the most beautiful stand of ancient, giant hemlocks in New England. These great-grandfathers are being attacked by the wooly adelgid, an insect native to Asia that betrays its presence only when the needles start to fall off the trees. The president of the trust, a retired engineer who built petroleum plants throughout the world, has raised funds to send a scientist to Japan, where knowledge about the adelgid and its natural predators is well advanced. Many years ago, this trust had a healthy stand of red pine on ten acres. A disease, then untreatable, was devastating red pine throughout the area. The trustees decided to keep the organism from multiplying and attacking red pines elsewhere. So they clear-cut the stand and used the proceeds to improve their properties.

Many things have changed since my father donated his land to the Connecticut Audubon Society. Owners have smartened up and few donors now enter into donation contracts without a strong recission clause. These legal arrangements generally recite the donor's expectations concerning the management of the gifted land: whether to allow the harvesting of mature timber, maintain trails, enforce limitations on public access, and so on.

Landowners are increasingly adept at protecting the environmental integrity of their land, as well as their plans for it, by selling conservation easements to land trusts. Such easements, which last in perpetuity, essentially foreclose any chance that the owners' wishes will not be respected. One can sell an easement, for example, requiring that the land be managed a certain way and cannot be sold for development. There's been an explosion in the variety of easement terms; with patience, a landowner may find an organization that buys easements allowing the harvesting of mature timber or providing expert management for wildlife and plants. If the transfer is to take place after the donor's death, the authority to enforce the recission power is frequently conveyed to a third party known as the enforcer, whose rights, responsibilities, and qualifications can be written into the contract.

Real Estate for Sale

My desire to see local land trusts receive the support they deserve is not limited to my experiences as a landowner and a conservationist. As a taxpayer, I have become concerned about the practice by national land trusts of purchasing ecologically valuable land from private owners for the purpose of reselling it to federal agencies. Taxpayers should hold government accountable for wise use of funds and tax exemptions, especially when the result is often to remove land from public access. Yet the federal government often overpays, to the enrichment of the national trusts involved. According to a 1992 report of the Interior Department's inspector general:

- Between 1987 and 1989, the Fish and Wildlife Service paid the Nature Conservancy $13.5 million for 11,502 Texas acres, including $500,000 paid in undocumented fees that boosted the price above market value. The same agency paid the same seller $4.5 million for Oklahoma land appraised at $3.5 million.
- In 1987, Fish and Wildlife paid the National Audubon Society $1 million for 777 acres in California appraised at $700,000. The agency reasoned that it had asked Audubon to acquire the land in 1983, when Audubon had to pay $1 million for it.
- The Nature Conservancy purchased 3,735 Arkansas acres in 1989. In 1991, Fish and Wildlife bought 1,153 acres of this appraised at $747,000 for $914,000, including interest and overhead charges of $251,000.

Looking to the Future

The last 15 years or so have witnessed an explosion in the number of small, community-based local trusts. According to the Land Trust Alliance, based in Washington, D.C., as of 1994 there were 1,100 land trusts with approximately 900,000 active members. The number of local trusts is now growing at about one per week. They own about 540,000 acres outright, have conveyed nearly 1 million acres to state and municipal parks, and have acquired various kinds of conservation easements on about 2.5 million acres.

I would like to imagine a future in which the practices of national landholding organizations converge with those of local trusts for the betterment of citizens and communities. Change is already occurring among the nationals. In most Northeastern and Western states, state and county forestry officials are products of excellent forestry schools. They understand the science-based management of wild land and wildlife. They advise the local trusts and, occasionally, the local affiliates of the nationals.

The 1991 Farm Bill included funding for a "Forestry Stewardship Program" that strengthens the advisory system local trusts and private owners depend on. Here and there, some local affiliates of the nationals are beginning to use science to manage their land. In most areas, relations between the locals and the nationals are cordial and the practices introduced by state and private foresters are being observed by the young idealists who work for national affiliates. In sum, science is once again beginning to overcome what has increasingly seemed a dogma.

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M.D. Monopoly

How Nurses Can Help Relieve Spiraling Health-Care Costs

Doug Bandow

Medicare isn't the only part of America's health-care system where costs are spiraling out of control. Doctors have created a cartel by confining the delivery of treatment solely to M.D.s and by regulating the number and activities of M.D.s. This suppresses the supply of health-care professionals, raising costs and reducing choice. State governments could significantly lower both public and private health-care costs by reducing physicians' stranglehold over medical care and moving towards a freer market. For its part, the federal government could, if it is willing to use its vast power under the commerce clause of the Constitution, preempt state rules that hamper the cost-effective delivery of medical services.

The Clinton administration recognized the problem of supply, but sought to remedy it by manipulating federal funding to force more doctors to become general practitioners. Similarly, the Council on Graduate Medical Education has urged educational changes to change the ratio of primary-care physicians to specialists from 30:70 to 50:50 by the year 2040.

The critical question, however, is not what percentage of doctors should provide primary care, but who should be allowed to provide primary care. Doctors are not the only professionals qualified to treat patients, yet most states needlessly restrict the activities of advanced-practice nurses (A.P.N.s) (who include nurse practitioners, nurse-midwives, clinical nurse specialists, and nurse anesthetists), registered nurses (R.N.s), licensed practical nurses (L.P.N.s), physicians assistants (P.A.s), nurse's aides, and similar professionals. Even today, these providers dramatically outnumber doctors—there are 2.2 million R.N.s, three times the number of M.D.s, and nearly 1 million L.P.N.s alone, while the number of A.P.N.s, at well over 100,000, is about half the number of physicians providing primary care. Ellen Sanders, a vice-president of the American Nurses Association, estimates that 300,000 R.N.s could become A.P.N.s with an additional year or two of training.

Although A.P.N.s, R.N.s, and L.P.N.s are capable of handling many simple and routine health care procedures, most states, at the behest of physicians, allow only M.D.s to perform "medical acts." According to Arthur Caplan, director of the Center for Biomedical Ethics at the University of Minnesota, "You have highly trained people doing things that could be done by others." Doctors perform what A.P.N.s could do, A.P.N.s do what registered nurses could handle, and registered nurses handle what nurse's aides could perform. "I can take care of a patient who has broken an arm," complains Maddy Wiley, a nurse practitioner in Washington state, "treat them from top to bottom, but I can't give them an adequate painkiller." Instead, patients can receive such treatment only through the government-created doctors' oligopoly, into which entry is tightly restricted. Observes Michael Tanner of the Cato Institute: "In most states, nurse practitioners cannot treat a patient without direct physician supervision. Chiropractors cannot order blood tests or CAT scans. Nurses, psychologists, pharmacists, and other practitioners cannot prescribe even the most basic medications."

The problem is exacerbated by the nature of the medical marketplace, where the expansion of services is expensive. Much of the necessary capital already exists—there are, for instance, a lot of unfilled hospital beds. The practice of medicine, however, has become increasingly labor intensive. The National Center for Policy Analysis figures that, because of the high cost of training medical personnel, "moving capital and labor from other sectors requires a price increase for medical services that is six times higher than that needed to expand other goods and services." As a result, the NCPA estimates, 57 cents of every additional dollar in U.S. medical expenditures is eaten away by higher prices rather than added services.

Physicians have shown unyielding resistance to alternative professionals. Medical societies have tried to prevent chiropractors, for instance, from gaining privileges at local hospitals. M.D.s have similarly opposed osteopaths and podiatrists. Working through state legislatures, physicians have won statutory protection from competition. Many states ban midwives from handling deliveries. Optometrists are usually barred from such simple acts as prescribing eye drops. Half of the states permit only physicians to perform acupuncture. Overregulation of pharmaceuticals, which prevents patients from self-medicating, also acts as a limit on health-care competition. Allowing over-the-counter sales of penicillin, for instance, could save patients about $1 billion annually.

Doug Bandow *is a senior fellow at the Cato Institute and the author of* The Politics of Envy: Statism as Theology.

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A recent episode in Georgia illustrates the arbitrariness of most occupational licensure regulations. According to Tanner, state legislation was introduced at the behest of dentists to prevent dental hygienists from cleaning teeth. Then an amendment was added for the ophthalmologists to bar optometrists from performing laser eye surgery. In the end, the bill prohibited anyone but physicians, veterinarians, podiatrists, and dentists from performing any procedure that pierced the skin, effectively outlawing nurses from drawing blood or giving injections. This unintended outcome would have brought most hospitals to a halt, and a court had to block its enforcement. Examples abound of legal restrictions promoted by self-serving professionals and harmful to consumers. In general, professional licensure has reduced the number of potential caregivers, cut the time spent with patients, and raised prices.

Illustration by Zoya Eydelman

The second manifestation of physicians' monopoly power is the anticompetitive restrictions that the profession places upon itself. The doctors' lobby has helped drive proprietary medical schools out of business, reduced the inflow of new M.D.s, and for years prevented advertising and discouraged members of local medical associations from joining prepaid plans. Until the early 1980s, the American Medical Association attempted to restrict walk-in clinics that advertised themselves as providing "emergency" or "urgent" care. Explained John Coury, who was then chairman of the AMA, "Some of these facilities were set up by nonmedical people as money-making propositions"—as if doctors don't seek to make money. Moreover, federal immigration law and state requirements limit the entry of foreign doctors into the country and often prevent them from finding work. None of these rules has much to do with consumer protection.

Allowing nurses to provide services for which they are qualified would expand people's options, allowing patients to decide on the more cost-effective course of their treatment. Some states have begun to allow greater competition among health-care providers. Mississippi does not regulate the practice of P.A.s. Nearly half the states, including New York, already allow nurse practitioners to write at least some prescriptions, while a handful, such as Oregon and Washington, give A.P.N.s significant autonomy. The Florida Department of Health and Rehabilitative Services is encouraging the training of nurse-midwives.

In this area, at least, the Clinton administration wanted to move in the right direction, pledging to "remove inappropriate barriers to practice." The Clinton proposal would have eliminated state laws that ban A.P.N.s from offering primary care—prenatal services, immunizations, prescription of medication, treatment of common health problems, and management of chronic but standard conditions like asthma—and to receive insurance reimbursement for such services. Even these modest efforts did not go unchallenged: The California Medical Association attacked the Clintons' proposal as "dangerous to the public's health," and an AMA report argued that expanding the role of nurses would hurt patients, fragment the delivery of care, and even raise costs.

There is, however, no evidence that the public health would be threatened by allowing non-M.D.s to do more. Professionals should be allowed to perform work for which they are well trained—without direct supervision by a doctor. At the very least, states should relax restrictions in regions, particularly rural areas, that have difficulty in attracting physicians. In this way, those with few health-care options could choose to seek treatment from professionals with less intensive training. A recent Gallup poll found that 86 percent of Americans would accept a nurse as their primary-care practitioner. Why not give them that option? Says Leah Binder of the National League of Nursing, "Let the 'invisible hand' determine how much it should cost to get a primary-care checkup."

Physicians assistants, for instance, receive two years of instruction to work directly for doctors and could perform an estimated 80 percent of the primary-care tasks conducted by doctors, such as taking medical histories, performing physical exams, and ordering tests. Similarly, the Office of Technology Assessment figures that nurses with advanced practices could provide 60 to 80 percent of the clinical services now reserved for doctors. Explains Arthur Caplan of the University of Minnesota, nurse practitioners are "an underutilized, untapped resource that could help reduce the cost of health care significantly." Len Nichols, a Wellesley economist, estimates that removing restrictions on A.P.N.s could save between $6.4 billion and $8.8 billion annually. Mary Mundinger, the dean of Columbia University's School of Nursing, contends that nurse practitioners have been providing primary care for decades and no research, even that conducted by doctors, has ever documented any problems.

Lonnie Bristow, the chairman of the AMA, admits as much, but responds that those nurses were working under a doctor's supervision. But that supervision is often quite loose. Nurses regularly perform many simple aspects of primary care far more often than doctors and, as a result, are better qualified to handle them in the future, with or

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without the supervision of an M.D.

None of the AMA's arguments withstands analysis. For instance, the official AMA report claims that because nurses want to serve all populations and not just "underserved" groups in rural and inner-city areas, "there is virtually no evidence to support" the claim that empowering other medical professionals would improve access to care. But increasing the quantity of primary health-care providers would necessarily make additional medical professionals available to every area. Moreover, poor rural communities would likely be better able to afford the services of A.P.N.s, whose median salary nationwide is $43,600, than a general-practice M.D.s, with a median salary of $119,000. Even if allowing nurses to do more increased competition only in wealthier areas, it would thereby encourage some medical professionals, including doctors, to consider moving to underserved regions where the competition is less intense.

The most compelling argument against relaxing restrictions on nurses is that Americans' health care might somehow suffer. "A nurse with four to six years of education after high school does not have the same training, experience, or knowledge base as a physician who has 11 to 16 years," complains Daniel Johnson, the Speaker of the AMA's House of Delegates. True enough, but so what? No one is suggesting that nurses do anything but the tasks nurses are trained to do. In fact, the OTA study judged A.P.N. care in a dozen medical areas to be better than that of M.D.s.

The problem of occupational licensure is not confined to doctors. The nursing profession behaves the same way when it has a chance. Under severe cost pressures, hospitals have increasingly been relying on L.P.N.s, nurse's aides, and "patient-care assistants." The cost savings can be great: Nurses typically receive two to four times as much training as licensed practical nurses and command salaries 50 percent greater. Yet in many hospitals they still bathe and feed patients. Stanford University Hospital has saved $25 million over the last five years by reducing the share of R.N.s among patient-care employees from 90 percent to 60 percent. The consulting firm of APM, Inc. claims that, since 1987, it has assisted 80 hospitals in saving some $1 billion. Alas, professional groups like the American Nurses Association have opposed these efforts.

To bring competition to the medical profession, patients should also be allowed greater access to practitioners of unorthodox medicine. In 1990, a tenth of Americans—primarily well-educated and middle- to upper-income—went to chiropractors, herbal healers, massage therapists, and the like. Health insurance covered few such treatments. Some of these procedures may seem spurious, but then, practices like acupuncture were once regarded similarly before gaining credibility. The most important principle is to allow patients free choice to determine the medical treatments they wish to receive. This means relaxing legal restrictions on unconventional practitioners and creating a health-insurance system that would allow those inclined toward alternative treatments to acquire policies tailored to their preferences.

Most important, states should address the obstacles to becoming and practicing as an M.D. This nation suffers from an artificial limit on physicians. Observes Andrew Dolan of the University of Washington, the argument that occupational licensing is necessary "to protect patients against shoddy care" is "unproven by almost any standard." Experience suggests that licensure reflects professional rather than consumer interests.

At the least, states should eliminate the most anti-competitive aspects of the licensing framework, particularly barriers to qualifying as doctors and to competition. These include that power of doctors to control entry into their own profession and to restrict competitive practices. As the National Center for Policy Analysis's John Goodman and Gerald Musgrave explain, "Virtually every law designed to restrict the practice of medicine was enacted not on the crest of widespread public demand but because of intense pressure from the political representatives of physicians." Although licensure is defended as necessary to protect patients, local medical societies spent years fighting practices (such as advertising, discounting, and prepaid plans) that served patients' interests, as well as imposing fixed-fee schedules on their members. No existing licensing requirement should escape critical review.

More far-reaching reform proposals include substituting institutional licensure of hospitals and establishing a genuine free market in health care (backed by private certification and testing and continuing malpractice liability). Such approaches seem shocking today only in the context of the vast regulatory structure that has been erected over the years. If we are serious about increasing access to and reducing the expense of medical care, we should give careful consideration to full deregulation. Such steps would do much to achieve the Clinton administration's goal of encouraging more primary-care physicians and more physicians from racial minorities.

The federal government shares some of the blame for clogging the pipeline of medical professionals, because its Medicaid and Medicare reimbursement rules encourage needlessly large and over-trained medical staffs. Medicare, for instance, requires hospitals to use only licensed laboratory and radiological technicians, and engage a registered nurse to provide or supervise the nursing in every department. Only nurse practitioners operating in nursing homes or rural areas can be reimbursed under Medicare. Only 18 states allow Medicaid reimbursement for A.P.N.s. Non-hospital facilities such as community health centers, which play a particularly important role in poor and rural areas, also face tough staffing requirements. These sort of restrictions hamper the shift to less expensive outpatient services. With enough political will, the federal government could play a role in easing state licensure, just as the Federal Trade Commission fought professional strictures against advertising.

The collapse of the Clinton campaign for radical reform was welcome, but the American medical system still needs fixing. The supply side would be a good place to start. Rising costs require us to look for cost-effective alternative providers. Even more important: Patients should have the largest possible range of options when determining their health care. It's time to integrate the practice of medicine into the market economy.

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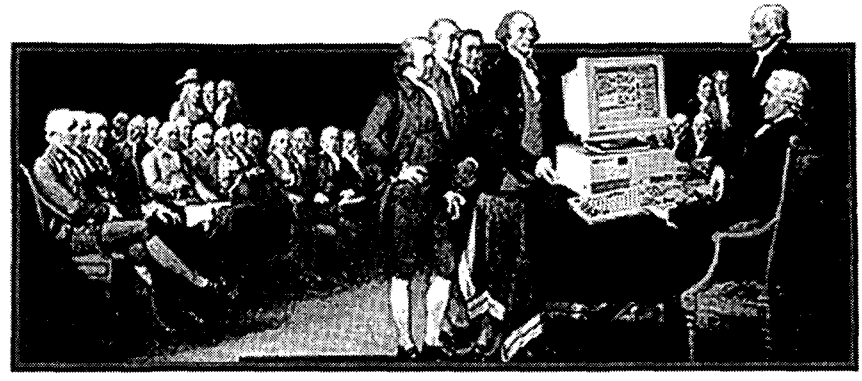

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LETTERS

Social Security, PTAs, Displaced Fathers, Foster Children, America Abroad, Flat Taxes, Cocaine Babies, Colin Powell, Philadelphia Crooks

Social Immorality

To the Editor:

Sam Beard's "Minimum-Wage Millionaires"(Summer 1995) is right about Social Security's financial perils and intergenerational divisiveness. What's really wrong with Social Security, however, is its immorality.

Social Security is wrong because:

- It's coercive. People are dragooned into it whether they want to participate or not.
- It's redistributive. There's no virtue in forcing some people to support others. Social Security rests squarely on Karl Marx's evil principle, "From each according to his ability, to each according to his need."
- It's paternalistic. Forced saving treats adults like infants and keeps them in perpetual dependence—something Tocqueville warned about. I'm a grown man. I neither need nor want my government babying me along. Most sane people know enough to provide for the future; those who don't aren't entitled to the earnings of those who do.

Beard's plan "keeps Social Security as a mandatory, redistributive savings program." It thus keeps Social Security's inherent immorality, too. Moreover, it epitomizes the decadence of establishment conservatism. Increasingly, conservatism is blind to first principles and engrossed in pragmatic policy tinkering. From Russell Kirk to policy wonks. What an odyssey!

There's only one right answer to Social Security: *Écrasez l'infâme!*

John Attarian
Ann Arbor, Mich.

PTAs No More

To the Editor:

Charlene Haar has produced a thorough indictment of the National Congress of Parents and Teachers and their state and local subsidiaries, bringing together details that have been acknowledged piecemeal for almost 30 years ("Cutting Class," Summer 1995).

Nor is the principle upon which the indictment is founded off-base: Teachers in PTAs pursue an obvious conflict of interest, disqualifying them from speaking on behalf of parents or children. Given the co-opting of PTAs by teachers since the late 1960s, it is a cause of some wonder why the least discussed reform option should be opting out, even in Haar's fine essay.

What the country requires is a National Congress of Parents in Schools, not a PTA. Interactions between teachers and parents will be no less legitimate when on a footing that gives parents the pride of place and dignity they deserve. Nor is it sensible to invest resources trying to restore to health a body shot through by the metastasized cancer of teacher unionism.

William B. Allen
Dean, James Madison College
Michigan State University
East Lansing, Mich.

Displaced Fathers

To the Editor:

With regard to William Mattox's article "Split Personality" (Summer 1995), the Men's Defense Association is pleased to note that father absence is recognized as a major cause of social upheaval.

Like other conservatives, however, Mattox makes a fundamental error in his blanket characterization of men as runaway fathers. The reality is that father absence is largely *involuntary*. Over 80 percent of divorces are initiated by *women*.

A married man is no more than a guest in his own home, able to be evicted at a wife's merest whim. Divorce-court judges and social workers displace fathers on a massive scale. *They*, and aspiring divorcées, of course, are largely to blame for social breakdown, not the evicted fathers.

He *is* right, though, about the dangers of no-fault divorce, which the Men's Defense Association warned state legislatures more than 20 years ago.

Richard F. Doyle
President
Men's Defense Association
Forest Lake, Minn.

Welfare for All

To the Editor:

Talk about perverse consequences: The words that stick in my mind are those uttered by the foster child Conna Craig quotes, "Everywhere I go, somebody gets money to keep me from having a mom and dad" ("What I Need is a Mom," Summer 1995). A similar insanity pervades other aspects of the welfare state—people get money that pushes them not to get married, not to find a job, and not to overcome disabilities. But our antiadoption bias is the looniest, and Craig has brilliantly shown why.

Marvin Olasky
Senior Fellow
Progress and Freedom Foundation
Austin, Texas

Fostering Whose Care?

To the Editor:

Conna Craig's "What I Need is a Mom" (Summer 1995) provides yet another example of Milton Friedman's adage "Whatever the private sector can do, the government can do worse."

One of the most infuriating aspects of the government's adoption debacle is the roadblocks erect-

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Katharine E. Moffett
Associate Publisher

ed by professional do-gooders against transracial adoptions. Unfortunately, we have more black foster care children than we have black homes to place them in. Ideally, these needy children would all become Huxtables. But if the world were ideal, these children would not need adoptive parents.

As someone who grew up with black friends who had white parents, I know transracial adoption can work. As someone who has friends who have traveled to Korea and Guatemala to adopt children, I know that private adoption works as well. As someone who has witnessed friends' frustration with adopting children in California, I know that state-run adoption rarely does. One can only hope that some real-world experience—such as Conna Craig's excellent article—will make it into the curricula at our nation's schools of social work. Then, perhaps, we can start building on what works and demolishing what doesn't.

Michael Lynch
Public Policy Fellow
Pacific Research Institute
San Francisco, Calif.

Liberty or License?

To the Editor:

Michael Medved has written a balanced treatise on what is right *and* wrong with American culture ("You Must Remember This," Winter 1995). He overlooks, however, the obvious reason American culture is embraced by foreigners: Popular culture—no matter the form—is an unambiguous manifestation of free thought. American culture is often devoured without discernment by those living under totalitarian or authoritarian regimes, merely because it is different from the controlled setting in which they live.

Before Ben Wattenberg or Medved tell us that American cultural influence is liberating, it might be noted that skinheads in Germany also use American symbols and music. The licentious qualities of the culture are consumed along with the liberating ones.

While many conservatives glibly assert that the influence of American culture on foreign lands is generally salutary, I'm not so sure. One need not accept Singaporean solutions to realize that the currently fashionable view of "alternative families" on television sitcoms may not be appropriate for domestic consumption—or for export.

Herb London
John M. Olin Prof Humanities
New York University
New York, NY

Flat Taxes—Almost

To the Editor

Thank you for bringing us J.D. Foster's "Even Money" (Summer 1995). It is the best article on the flat tax to date.

While I approve of Dick Armey's flat tax, Foster points out several areas that need improvement.

One area is the exclusion of retirement income from personal income taxes. While I oppose double taxation, I realize that excluding retirement income only provides a quick fix—one that will not stand the light of public scrutiny.

Besides, this exclusion would increase the federal government's dependence on business taxes, already the largest source of hidden taxes in our economy, and would leave retirees without the discipline that paying taxes provides.

Wouldn't it be better to continue to tax individual incomes but to forgo the quick fix by eliminating business taxes altogether? Would this not remedy the double taxation problem?

Eliminating business taxes would put profits into the pockets of voters in a combination of higher pay to employees, higher returns to owners, and lower prices for all consumers.

Another weakness is the exemption of the lowest incomes from the flat tax. For the lowest incomes, perhaps we should raise the zero tax rate to 1 or 2 percent.

Finally, I strongly urge retaining the charitable deduction. I know that it would complicate tax returns, but there is much merit to incentives for charitable work. Perhaps the list of charities should be confined to those services that, without charitable support, the state or federal government would have to perform.

Frank K. Hoover
Evanston, Ill.

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Flattening a Straw Man

To the Editor:

Dick Armey has done heroic work over the past 18 months promoting a postcard flat tax to replace the current income tax system. Other than privatizing Social Security, there is probably no economic change that would brighten the economic future of our children and grandchildren more than ending the punitive treatment of savings and investment in the current tax code.

But since the Cato Institute has long advocated abolishing the income tax altogether, I feel compelled to respond to his critique of the national sales-tax alternative.

Armey's article is subtitled "The Case Against the National Sales Tax," yet the article has little to say about a national sales tax (NST) and a great deal to say about the value-added tax (VAT). This is a common tactic of those on the right who oppose any discussion of a national sales-tax. Not wishing to debate the sales-tax alternative on its merits, they attack the VAT. But the NST and the VAT are two entirely different animals.

I reject the idea that the NST would necessarily evolve into a VAT. Most of the European nations did not start with a pure retail-sales tax, but rather some sort of value-added tax they called a "sales tax." Canada did so as well. And no industrialized nation has ever completely replaced its income tax with a national sales tax. No state sales tax has ever evolved into a VAT. The rate of national sales tax to replace personal income taxes, corporate income taxes, and capital gains taxes would not have to be "at least 20 percent" but rather between 16 and 18 percent. Over time, as the abolition of the income tax generates strong economic growth, the rate would fall below 15 percent. If Armey believes, as I do, that this rate is still too high, the solution is straightforward: cut government spending.

Still, Armey is right that there are no guarantees that a sales tax would not evolve into a VAT. Of course, there are no guarantees that that we will not get a VAT whether we get rid of the income tax or not. And by the same token, there's no guarantee that Armey's flat business tax will not evolve into a VAT. We will forever have to fight the VAT whether we adopt a sales tax, a flat tax, or retain the current income tax.

Would NST become an "administrative mess"? Compared to what? Nothing could be more administratively messy than today's 9,000-page income tax. A well-constructed NST, as in the Schaeffer-Tauzin bill, could not be less complicated. The bill has a broad base of final consumption goods and services and has almost no deductions. Regressivity is dealt with through a simple rebate formula for low-income families.

What would the states do? Armey says they would abolish their state sales taxes. Here I strongly disagree. NST advocates would allow states to raise their own revenues however they wished, but without a federal income tax and a federal IRS, it would be extremely expensive and inefficient for states to rebuild the entire income-tax infrastructure on their own. The rational response of state lawmakers would be to piggyback off of the federal sales tax—just as states now piggyback off of the federal income tax.

There was one line in the Armey article that I found particularly troubling, however. he contends that liberating America from the income tax is "politically, not in the cards." Whether he is right or not, this may be the only time I have ever known Dick Armey, an agent of profound and improbable change throughout his career, to stray from his usual optimism that freedom triumphs.

If the Berlin Wall can come down, if the Republicans can end 40 years of Democratic control of the House of Representatives, and if a Ph.D. economist from Cando, North Dakota, who started his political career sleeping in the House gymnasium can become majority leader (and arguably the best in this century), then certainly America can unchain itself from its 80-year bondage to the income tax.

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Cracked Research

To the Editor:

I recently reviewed Charles Condon's "Clinton's Cocaine Babies" (Spring 1995). I have also assessed the merits of the research Condon uses to demonstrate the success of the Medical University of South Carolina's program to reduce cocaine-related births. Condon's comments suffer from many inaccuracies. I will clarify several methodological and ethical issues here.

First, Condon claims that MUSC's program successfully reduced cocaine use by pregnant women without scaring them away from the hospital with the threat of legal action. But Condon's analysis relies on faulty data. For example, Condon and his colleagues present the numbers of births at MUSC for the first three months of four consecutive years, noting that live births at the hospital remained the same after the introduction of the program as before. They conclude that the

University Accreditation Redux

Since Thomas Dillon's Spring 1995 article on the dangers of nationalizing the university accreditation process, three important events have happened: (1) the entity behind the move—the National Policy Board—has suspended its operations and there is little support for reviving the centralized accreditation scheme; (2) the executive director of the Western Association of Schools and Colleges—a major advocate of diversity standards and centralization—has resigned; and (3) the U.S. secretary of education has approved the first independent accreditation group, the American Academy for Liberal Education, thereby breaking the accreditation monopoly. Colleges and universities nationwide can now seek approval from an accreditor that applies liberal-arts academic standards rather than a liberal political agenda. Dillon, the president of Thomas Aquinas College, hopes his school will be at the top of the list.

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threat of legal action did not prevent women from seeking prenatal care. But it is impossible to arrive at this conclusion without knowing what happened the other nine months of those years. Contrary to Condon's belief, subsequent interviews with women in the Charleston area have confirmed that the fear of legal action did in fact drive many women away from MUSC.

Second, Condon's analysis does not seem to control for non-cocaine-related causes of birth defects. It is difficult to sort out the cause of birth defects. We know that poor nutrition and sanitation, stress, smoking, and drinking alcohol can all cause birth defects. We can't simply blame all birth defects on the drugs a woman might have used during pregnancy.

Third, Condon's research is faulty because it relies on a biased or captive sample population, i.e. participants in the MUSC program were not representative of the larger population and were coerced into their participation. In other words, the subjects were predominantly poor African-American women who had no choice but to go to MUSC for health care. Biased samples lead to inaccurate results and conclusions.

And apart from the methodological difficulties posed by using a captive population, there are ethical considerations as well. The women who participated in MUSC's program had no other choice. Informed that they would go to jail if they did not participate, they were forced into the treatment program. In addition, while they signed a general consent form to be treated at the hospital, they were not told about the research being conducted on the drug treatment program nor were they asked for their consent to be used as research subjects. Federal law, as well as common-sense ethics, dictates that *specific* consent be obtained for any kind of research to be performed and that people ought not be coerced into a treatment program.

Finally, it needs to be highlighted that a tension exists within Condon's own statement that an aggressive treatment program is needed to deal with pregnant cocaine-users. He states that "30 percent of those who enter public drug-treatment programs do so only because of direct or indirect legal pressure." What we must keep in mind is that this means that *70 percent* of those who enter drug treatment programs do so *voluntarily* and, therefore, do not need Condon's aggressive program.

Many experienced and competent individuals have reviewed the research article about the MUSC policy, and none believes it supports the claim that it was a "successful drug treatment program." The federal government was correct to intervene in this matter and justified in halting this blatantly unethical and scientifically unsound research. Support for punitive policies should not be based on research that falls tests of ethical, scientific, and legal standards.

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Powell Pampered

To the Editor:

One can only guess where Adam Meyerson is coming from when he states that Colin Powell did not become "one of the outstanding generals in American history by receiving special treatment in his performance reviews" ("Nixon's Ghost," Summer 1995).

Colin Powell is certainly an outstanding person, having served two tours in Vietnam with distinction and graduating second in his class at the Command and General Staff College at Fort Leavenworth. But after he assumed a coveted research analyst position with the assistant vice-chief of staff of the Army, he was tagged for the top and all doors were opened for him.

As a Nixon White House Fellow, Powell met OMB head Caspar Weinberger and Weinberger's assistant, Frank Carlucci. Carlucci, whom Powell refers to as his "godfather of godfathers," along with defense secretary Donald Rumsfeld and Ford chief of staff Dick Cheney, provided Powell with those assignments (like his 12-month stint as a battalion commander in Korea and his enrollment at the highly selective National War College) that would help qualify him for rapid promotions. Powell got his third star without ever commanding a division, because rules were bent in his favor.

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Advice Without Consent

To the Editor:

In "Bail, Humbug!" (Summer 1995), Sarah B. Vandenbraak spotlights a problem faced by mayors in many major cities. New York City, in particular, is bound by a web of consent decrees. These decrees have locked the city into policies that later experience has shown to be expensive and self-defeating.

In an article in the Manhattan Institute's *City Journal* (Summer 1994), law professors Ross Sandler and David Schoenbrod spell out some ways that consent decrees empower private attorneys at the expense of democratic governance and freeze bad policies in place:

- They go beyond the law. Under litigation pressure, city officials agree to conditions that an actual court could not or would not force on them.
- They turn private attorneys into powerful players in future city governments. Under one New York decree, for example, the New York City Board of Education must send representatives to meet with private attorneys behind closed doors every two weeks. These attorneys face no voters, yet their right to review and approve deviations from the decree can make them more powerful than duly elected public officials.
- If a city administration sympathizes with the activist's goals, it can use a consent decree to bind its successors—the problem of "sweetheart decrees"—depriving future voters of a chance to change a failed policy.

Vandenbraak powerfully recounts the plight of Philadelphia merchants victimized by repeat criminals under the turn-'em-loose decree. Taxpayers in many cities are also losers under this device—all the more reason to explore methods by which policymakers can curb its abuse.

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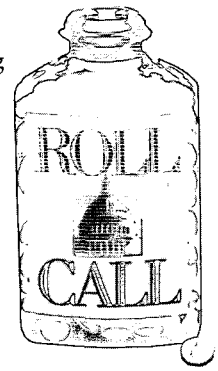

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policy REVIEW

Serious threats will surely arise; whether they prove deadly will depend on us. Americans can be defeated or our interests thwarted only if we lose our moral virtues, make foolish moves in the world, and neglect our military power. No government has ever matched the Clinton administration in these failings. . . . The administration treats military matters as a spectator sport. The foreign-policy establishment calls Americans' objections to such leadership by turns warmongering and isolationism. Our presidential candidates should recognize these objections as wisdom.

Malcolm Wallop

Beyond the Water's Edge:

Military and Foreign-Policy Issues for the '96 Campaign

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